

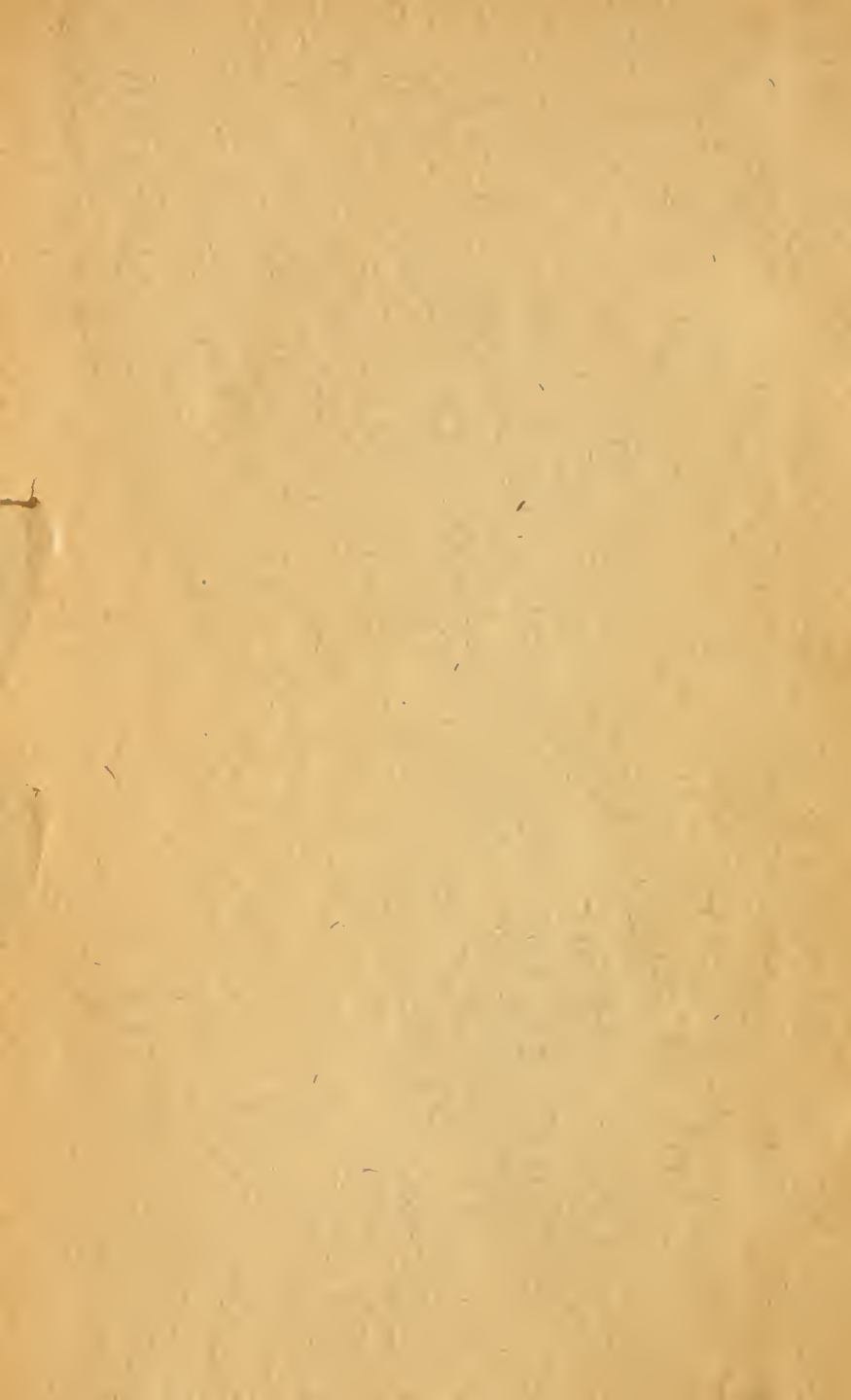
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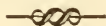
THE  
HISTORY  
OF THE LATE  
PROVINCE OF NEW-YORK,  
FROM  
ITS DISCOVERY,  
TO THE  
APPOINTMENT OF GOVERNOR COLDEN,  
IN  
1762.

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BY THE HON. WILLIAM SMITH,  
Formerly of New-York, and late Chief Justice of Lower Canada

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VOL. II.



NEW-YORK:

PUBLISHED UNDER THE DIRECTION OF THE NEW-YORK  
HISTORICAL SOCIETY.

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## ADVERTISEMENT.

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IN the preface to the first Volume of my Father's History of New-York, he has stated the reasons which induced him not to publish it beyond a certain period ; however forcible they might have been at that day, they no longer exist, and I therefore have taken the resolution to offer to the public the continuation of this history, written with his own hand. I read it with the utmost attention before I resolved upon the publication. I put the work into the hands of some of my friends, (conceiving that it would have been presumption in me to have trusted to my own partial decision,) and they encouraged me to offer it to the public, as a curious and interesting book. When I resolved to follow this advice, it was a circumstance of great weight with me, that as it would probably be published at some future day, and might fall into the hands of an editor, who, not being actuated by the same sacred regard for the reputation of the author which I feel, might make alterations and additions, and obtrude the whole on the public as a genuine and authentic book. The continuation of the history is therefore published as it was left by the author, with a few verbal alterations and corrections.

WILLIAM SMITH,

*Member of his Majesty's Council.*

Quebec, August 4th, 1824.



# CONTINUATION

OF THE

## HISTORY OF NEW-YORK.

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### CHAPTER I.

*From Colonel Cosby's appointment to his death; and to the appointment of Mr. Clarke as President of the Province, in 1736.*

UPON the death of Mr. Montgomorie, the province was committed to the care of Colonel William Cosby: he had formerly governed Minorca, and exposed himself to reproaches in that island, which followed him across the Atlantic. It was by his order that the effects of one Coppodoville, a Catalan merchant, then residing at Lisbon, were seized at Port Mahon, in 1718, several months before the war of that year was declared against Spain; and he was charged with scandalous practices to secure the booty, by denying the right of appeal, and secreting the papers tending to detect the iniquity of the sentence, and enabling the proprietor to procure its reversal. He arrived here the 1st of August, 1732, and on the 10th spoke to the Assembly, who had met several days before, agreeably to an adjournment. After informing the House, that the delay of his voyage was owing to his desire of assisting the agents for defeating a bill brought into Parliament, partial to the sugar islands, he declared his confidence in their willingness to provide for the support of government, by settling a revenue as ample and permanent as in any former instance; urged their attention to the Indian commerce, and promised his power and interest to render them a happy and flourishing people.

The Assembly were more liberal in the address with their thanks than their promises ; for they merely engaged in general to contribute to the ease of his administration, and therefore he repeats his request when they come before him to present it.

From their dread of the success of the sugar act, they did not hesitate about a revenue to support the government for six years ; nor to secure out of it, the payment of a salary of fifteen hundred and sixty pounds to the Governor, with the emoluments of four hundred pounds per annum in fuel and candles for the fort, and one hundred and fifty pounds for his voyage to Albany, besides a sum for presents to the Indians. But it was late in the session before they voted any compensation for his assistance to the agents, and not till after the support bill had been passed. They then agreed only to present him with the sum of seven hundred and fifty pounds. The Governor, who had intelligence of it, intimated his disgust, but in terms which, though it procured him an augmentation of two hundred and fifty pounds more, lost him their esteem. He accosted Mr. Morris, one of the members, on this occasion, in terms expressing a contempt of the vote. "Damn them," said he, "why did they not add, shillings and pence ? Do they think I came from England for money ? I'll make them know better."

This year was the first of our public attention to the education of youth : provision was then made for the first time to support a Free School, for teaching the Latin and Greek tongues, and the practical branches of the mathematics, under the care of Mr. Alexander Malcolm of Aberdeen, the author of a Treatise upon Book-keeping. The measure was patronised by the Morris family, Mr. Alexander, and Mr. Smith, who presented a petition to the Assembly for that object ; such was the negligence of the day, that an instructor could not find bread, from the voluntary contributions of the inhabitants, though our eastern neighbours had set us an example of erecting and endowing colleges early in the last century.

The bill for this school, drafted by Mr. Philipse the speaker, and brought in by Mr. Delancey, administered to some merriment. It had this singular preamble: "Whereas the youth of this colony are found, by manifold experience, to be not inferior in their natural geniuses to the youth of any other country in the world, therefore, be it enacted," &c.

The opposition to the sugar act, which now engrossed so much the public attention, was unsuccessful. Mr. President Van Dam, the Council, and the Assembly, had all concurred in a petition against it to the King, while Mr. Cosby was in England. They represented the islands as aiming at a monopoly injurious both to the colony and the mother country: asserted that this colony took off more British woollens than all the islands together, except what was imported by Jamaica for the Spaniards; that the act would reduce them to raise their own clothing; that the provisions, horses, and lumber exported from this, and the colonies of New-Jersey and Pennsylvania, brought returns from the foreign as well as British islands, in money, rum, sugar, molasses, cocoa, indigo, cotton, all which, except the rum and molasses, were either consumed here, or furnished remittances to Great Britain for her balance against us; and the specie sent from this colony alone, they conceived to be more than from all the British islands together, Jamaica only excepted: they denied that the British sugar islands could take off the provisions raised by the three northern colonies aforementioned, or supply us with rum without lessening the exports of sugar. Nothing could be more importunate than their supplications for the King's protection against the West India project: and now the Assembly devoted one hundred and fifty pounds per annum, with fifty pounds more for disbursements, to any person whom certain merchants of London should nominate as their agent, to assist this colony in what they conceived to be threatening them with ruin; for they apprehended that all purchasers from the foreign

islands for our products, were to be totally prohibited—a design, however, not countenanced by the act.

While Mr. Van Dam was in the chair, it became a question in Council, on drawing the warrants for the Governor's salary, whether the whole or only the moiety should be received by the President. The Assembly were consulted upon it, but declined an opinion. The Council then advised warrants to Mr. Van Dam for the whole salary, and he received the money. Mr. Cosby came out with the King's order of the 31st of May, 1732, for the equal partition between himself and the President, of the salary and all perquisites and emoluments of government during his own absence. Van Dam was contented, if the Governor would also divide with him the sums which came to his hands in England, for he confessed his own receipts to amount to no more than one thousand nine hundred and seventy-five pounds, seven shillings and ten-pence, and insisted that the Governor's were six thousand four hundred and seven pounds, eighteen shillings and ten-pence. Colonel Cosby would not consent to this demand, and the President, who thought him his debtor, refused to tender him a farthing, and demanded a balance. The Governor, to compel the payment and prevent any discount, was advised to proceed against Van Dam in the Exchequer, for in a suit at common law he dreaded a set-off and the verdict of a jury, the President being a popular and reputable merchant. In Chancery no measures could be taken, for there the Governor presided, and could not be an unexceptionable judge in his own cause.

The Supreme Court exercised the ample authorities both of the King's Bench and Common Pleas, and its sittings, or terms, had been fixed by ordinances of the Governor with the advice of the Council. In certain instances, the Judges had proceeded according to course of the Exchequer, their commissions directing them "to make such rules and orders as may be found convenient and useful, as near as may be agreeable to the rules and orders of our

Courts of King's Bench, Common Pleas, and Exchequer."

Hence the hint for proceeding in Equity before the Judges of the Supreme Court, as Barons of the Exchequer, the majority of whom, Messrs. Delancey and Philipse, were the Governor's intimate friends. In Mr. Morris, the Chief Justice, he had not equal confidence.

As soon as Bradley, the Attorney General, brought a bill in this Court against Mr. Van Dam, the latter resolved to file a declaration at common law against Mr. Cosby, before the same Judges, for his moiety as money received by the Governor to his use, and required his Excellency, by a letter of the 27th August, 1733, to give orders for entering his appearance at his suit. The Governor slighted his request, and Van Dam, by his counsel, moved the Judges in the subsequent term of October, for their letter to his Excellency, similar to the practice of the Chancery where a peer of the realm is defendant. The Judges permitted him to file his declaration, but refused the letter, as unprecedented at law, and left him to choose the ordinary process. A summons was then offered to the Clerk of the Court for the seal, but he would not affix it to the writ. The Attorney General had in the mean time proceeded before the same Judges in Equity, to a commission of rebellion, and Van Dam found himself compelled to a defence.

It is natural to imagine that Van Dam's hard and singular situation would excite pity, and that the populace might be induced to redeem him from oppression. He had early engaged Messrs. Alexander and Smith, two lawyers in high reputation, for his counsel. They took exception to the jurisdiction of the Court, and boldly engaged in support of the plea. But when judgment was given by the puisne Judges for overruling it, the Chief Justice opposed his brethren, in a very long argument in writing, in support of his opinion; at which the Governor was much offended, demanded a copy, and then the Judge, to prevent misrepresentation, committed it to the press.

The exceptions were three :—That the Supreme Court, which claimed this jurisdiction in Equity, was established by an ordinance of the late King George the First, and expired at his demise, and had not been re-established in the present reign :—That his present Majesty, by his commission to Governor Montgomerie, under the Great Seal of Great Britain, having commanded him to execute all things in due manner, according to the powers granted by that commission, and the instructions therewith given by the 39th article, of which he was required to grant commissions, with the advice of the Council, to persons fit to be Judges, and that he had commissioned Mr. Delancey and Mr. Philipse without such advice :—That they had no jurisdiction or authority to compel the defendant to appear upon oath, concerning the matters in the bill ; and there is no prescription, act of Parliament, nor act of Assembly, to establish any Supreme Court, nor to empower any Court or persons to hold cognizance of pleas in a Court of Equity, in or for this province.

Mr. Cosby went to his government in Jersey very soon after the order for overruling the plea, which was the 9th April, 1733, in the presence of a crowded and exasperated audience; and upon his return in August, presented Mr. Delancey, at the Council Board, with a commission to be Chief Justice, and had issued another advancing Mr. Philipse to the second seat. The members present, besides Delancey, were Clark, Harison, Colden, and Kennedy, so that he could not form a Board for this step, there wanting the necessary quorum of five competent members. He did not ask their opinion or advice on this unguarded measure, which added fresh oil to the flame, already spread through the colony, and excited the fears of the multitude.

The Assembly meeting soon after in autumn, Mr. Morris was chosen to represent the county of Westchester, in the place of a deceased member ; but he did not present the indenture of his return till the

last day of a short session, in which nothing of much moment was transacted.

The Court (for all the province was already divided into two parties) made an ineffectual opposition to Mr. Morris's introducing his son Lewis into the Assembly, as the Burgess of the town of Westchester. One Forster, a schoolmaster, and appointed Clerk of the Court by Mr. Cosby, was set up against Mr. Morris, and supported by Mr. Delancey and Mr. Philipse, who canvassed against the old Judge, who offered himself to the county. The Quakers were all set aside by the Sheriff Cowper, who insisted upon an oath instead of the affirmation, to prove their freeholds; a violence, however, which laid the foundation for a law in their favour, while it added, for the present, to the general discontent, already risen so high in the capitol, that their joy on Mr. Morris's next arrival there, was announced by the explosion of the cannon of the merchants' ships in the harbour, and by the citizens meeting and conducting him, with loud acclamations, to a public and splendid entertainment.

The arts, common in such ferments, were played off by the leaders of the opposition. Zenger's Weekly Journal was engaged in their service, and a great part filled with extracts from the spirited papers of Trenchard, Gordon, and other writers on the popular side; while Bradford's Gazette was employed to defend the Governor and his party.

In the course of the winter of 1734, two vessels arrived for provisions from Louisburgh, where such strong fortifications were erecting as excited the jealousy of all the northern colonies; and the circumstance of their sounding the passage up from the Hook being discovered, an advantage was taken of it, and an affidavit taken to prove it, published in the papers. The odium fell on the Governor, as countenancing the design of exposing the port and colony to the French; and Mr. Van Dam made this one of the articles of the charge of mal-administration.

which he transmitted against him, though there did not appear the least ground for the imputation.

At the parting of some company from Mr. Alexander's, late in the evening of the 1st February, an incendiary letter was picked up in the hall. It had been shoved under the outer door, and was instantly pronounced by Mr. Alexander to be the handwriting of Mr. Harison, then a member of the Council. It was in these words :—

“ TO MR. ALEXANDER :

“ I am one who formerly was accounted a gentleman, but am now reduced to poverty, and have no victuals to eat ; and knowing you to be of a generous temper, desire you would comply with my request, which is, to let me have ten pistoles, to supply my necessities and carry me to my native country. This is a bold request, but I desire you would comply with it, or you and your family shall feel the effects of my displeasure. Unless you let me have them, I'll destroy you and your family by a stratagem which I have contrived. If that don't take the desired effect, I swear by God to poison all your tribe so surely, that you shan't know the perpetrator of the tragedy. I beg, for God's sake, that you would let me have the money, and hinder me from committing such a black deed. I know you can spare it, so desire you would let me have it. Saturday night, about 7 o'clock, leave it by the cellar door, wrapped up in a rag, and about an hour after, I will come and take it : put it on the ground just where I put the stick. If you don't leave it, I advise you not to drink your beer nor eat your bread, if you value your life and healths, for by my soul, I will do what I've mentioned. If I find any watch to guard me in taking of it, I'll desist and not take it, but follow my intended scheme, and hinder you from acting any more on the stage of life. If you comply, I'll never molest you more ; but if not, I'll hazard my life in destroying yours, and continue what I am.”

From the neglect to disguise the hand, which Mr. Smith, Mr. Hamilton, Mr. Lurting the Mayor, all pronounced to be Mr. Harison's, it was conjectured that his design was to provoke a criminal prosecution, establish the precedent of convicting on the proof of a similitude of hands, and then, by counterfeiting the writing of one of the demagogues of the day, to bring him to the gallows, while the Governor's friends were to escape by pardon.

It was therefore with great earnestness that Mr. Alexander, under the influence of that suspicion, when called before the Grand Jury, contended against their finding an indictment only upon such evidence, and with caution and reserve that he mentioned Mr. Harison's name, as the Grand Jurors themselves afterwards certified. They contented themselves with an address to the Governor, acquainting him that they could not discover the author, being able to have the evidence no higher than a resemblance between the letter and his writing: that least a presentment or indictment by them upon such evidence, should prove a trap to ensnare some innocent person upon the oath they had taken, they durst not accuse any individual. They besought him, nevertheless, to issue a proclamation, with a promise of reward, for detecting the author of the villany.

This matter was laid before the Council, and referred to Messrs. Harison, Van Horn, Kennedy, Delancey, Courtlandt, Lane, and Horsmanden, who, as a committee, proceeded to make the necessary enquiries preparatory to a report. As Mr. Alexander and Mr. Smith, who were summoned to attend there, refused to appear, while Harison, the suspected author, was of the committee, and Mr. Alexander, a member of the Board, left out, they proceeded only upon the testimony of Mr. Hamilton and Mr. Lurting; and though they advised a proclamation, offering fifty pounds for a discovery, yet they reported it as their opinion, that Mr. Harison was entirely innocent of the infamous piece of villany laid to his charge; that he was incapable of being guilty of so foul a deed; and

that the letter was a most wicked, scandalous, and infamous counterfeit and forgery, calculated, by some artful, malicious, and evil-minded persons, to traduce and vilify the character of an honourable member of his Majesty's Council of this province, and thereby render him odious and infamous to mankind.

Whether the Governor was let into the design of the author of the letter, was never discovered; though some stress was laid upon words dropped by a man intimate in the family, who, coming home in his cups late in the evening shortly before the letter was found, said a scheme was executed to hang Alexander and Smith; and Mrs. Cosby frequently, and without reserve, had declared that "it was her highest wish to see them on a gallows at the fort gate."

Harison was generally suspected, in spite of the testimonial of the Council, of which he made all the use in his power in an exculpatory address to the City Corporation, whose Recorder he then was, suggesting that Mr. Alexander and Mr. Smith had forged the letter to ruin him. They published a refutation of the scandal, which, by assigning proofs of his enmity, strengthened the general suspicions then prevalent against him.

Harison had been concerned with them and others in the design of procuring a patent for part of the great Oblong, surrendered to this colony on the settlement with Connecticut.

The petitioners were in this way to be recompensed for two thousand pounds expended in effecting the establishment of the eastern line of the colony. While the business of the surrender was negotiating, Harison had perfidiously revealed the design to Sir Joseph Eyles, the Duke of Chandois, and others, and prompted them to sue out a patent in England. It issued there on the 15th May, 1731, upon erroneous suggestions, and with a description, which did not include the lands meant to be taken up, and which were fortunately granted by Mr. Montgomerie before the English patent arrived, or Mr. Harison had time to correct the information, by which they had been

deceived, and on which account he had justly exposed himself to censure on both sides of the water.

Add to this, that at the very time of finding the incendiary letter, Mr. Harison was under a prosecution tending to overwhelm him with disgrace: he had promoted an action for two hundred pounds in the name of Wheldon, against one Trusdel, who had been his servant. The defendant was reduced to great straits by the action, and complained to his creditor, who knowing nothing of the prosecution, took Trusdel to be insane. When it was discovered that Mr. Harison had ordered the writ in October 1732, to gratify a pique of his own, and without any authority from Wheldon, he retained Mr. Alexander and Mr. Smith, to avenge the poor man he had injured. The Grand Jury presented Harison, and Trusdel in a civil process was cast in the trial. It was afterwards published, and exhibited such proofs of the ingratitude, cruelty, dissimulation, and injustice of Mr. Harison, that he soon after fled to England.

The Attorney General, in tenderness to a man who, besides his place in Council, was Judge of the Vice Admiralty, Examiner in Chancery, and Searcher of the Customs, neglected to put the presentment in form. Several subsequent Grand Juries complained of this delinquency unnoticed, and the criminal kept his ground till 1735, when the fourth Grand Jury resolved he should be screened no longer, and presented an indictment in form.

The political writers, by their industry and address, captivated the minds of the populace, who now ascribed every thing they felt or feared, to the mal-administration of their rulers. To undeceive and assuage them, Mr. Cosby convened the Assembly in April, 1734. His salary being secured for several years to come, he had no formidable apprehensions from Mr. Morris's intrigues in the House; and by his friends, Mr. Delancey the new Chief Justice's father, Mr. Philipse the speaker, and his nephew, the second Judge, and their influence upon others, he hoped to bear down the opposition. His speech was a confes-

sion of the reality what the public invectives had asserted. He admitted the decay of trade, which his adversaries had imputed to his misrule and the flight of the inhabitants, though he ascribed it to their neglect of ship-building, and the employment of Bermudians as their carriers, and the want of inspectors to support the credit of flour, the main staple of the colony. He urged them to fortify the two cities of New-York and Albany, according to plans he had proposed. He recommended a duty of tonnage on foreign vessels, and a stamp duty upon law proceedings and conveyances; and computed that the uncertain produce of the latter should remain in their own Treasury, for future application. He exclaimed against the importation of negroes\* and convicts; urged a provision for maintaining smiths and artificers among the Indians, to counteract the artifices of the French; and promised his concurrence in any law for the defence of the province, the encouragement of commerce, agriculture, and manufactures, the arts and the sciences.

The Assembly expressed their gratitude in very affectionate terms, and promised their attention to these objects. The Council, in concert with the Governor's conciliatory schemes, sent down to the Lower House, a bill in favour of the Quakers, within two days after a petition had been presented to the Assembly in their behalf. The plans and estimates for a horse-shoe battery in New-York, a fort at Albany, and another at Schenectady, at the expense of near eighteen thousand pounds, were communicated, and an act passed to raise money, and promote our own navigation by a duty of tonnage. Popular motions were also made by the court party: a bill was brought in to introduce the balloting of jurors. Judge Philipse complained of the exorbitancy of the fees of

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\* A poll-tax upon negroes, and a stamp duty, being frequently urged upon the Assembly by Mr. Delancey, when he came to the chair, renders it probable that this speech of Mr. Cosby's was of his prompting: he was always fond of those funds.

officers and lawyers, and a bill was ordered for regulating them: Mr. Delancey moved another, for limiting the continuance of Assemblies, to which the House would consent, if the elections were triennial.

The multitude, however, put no confidence in their appearances, and petitions were circulated to stimulate their representatives to real services: two were preferred on the 28th May, one from the citizens of New-York, and another from the inhabitants in Westchester. A third soon after came up from Queens county; all urging a law to settle fees and courts, for preserving the liberties and properties of the people from arbitrary encroachments.

The aim of the opposition was to overturn the Court of Exchequer; and on the 31st May, they carried a resolve for hearing Messrs. Murray and Smith, two principal lawyers of different parties, upon that part of the petitions respecting Courts of Justice, for all were agreed upon the fee bill, already before the House.

The 7th of June was appointed for this unparliamentary condescension of the Assembly. The lawyers appeared there, not as counsel for the petitioners, but assistants of the Legislature. The doors were thrown open to satisfy the general curiosity, and the orators admonished that the House expected their opinions candidly, sincerely, and upon honour.

Mr. Murray, the senior counsel at the bar, being not prepared, Mr. Smith began, and spent three hours in that memorable speech which I have already taken notice of. Mr. Murray was heard five days afterwards, and then both were dismissed, with the thanks of the House. The doctrine of the former was, that no Court of Equity could be erected in the colony by any act of the crown. The latter argued, that the four great Courts of Chancery, King's Bench, Common Pleas, and Exchequer, were of original jurisdiction, and founded on immemorial usage, but conceiving the colony entitled to like courts, as essential branches of English liberty: he expressed his fears that the establishment of them by a new law, would

raise doubts of our title to the rights and privileges of Englishmen; and therefore he thought it expedient to go further than merely to regulate them, as had been done in England, by a law to establish the tenure of the Judges' commission during their good behaviour.

The Senators were confounded by the long arguments they had heard, and requested copies for the press, postponing any further measures until they had taken the sentiments of their constituents.

The advocates for Mr. Smith's opinion had no prospect of establishing the courts by a law of the colony, but only of drawing the House into the quarrel between the Governor and Mr. Van Dam; for they foresaw that he would put a negative upon any bill sent up for that purpose. It did not follow from his authorities, as some imagine, that no court could be opened and organised in the colony without the aid of the Legislature; nor would the passing of an act for that purpose, in the least degree shake our titles, as Mr. Murray asserted, to any other rights and privileges to which we are entitled by the common laws of England.

Neither of these gentlemen, had the question been proposed by the House, would have denied that the colony was entitled, for instance, to a Court of King's Bench, nor that the law constituting the Judges of it, sufficient for their exercise of all the powers of the Court of King's Bench at Westminster, and so respecting either of the other courts.

Mr. Smith's law authority did not militate against such a court, because it would not be creating a new court; and if the crown had exceeded its authority in modelling it, by an ordinance or commission, though that act might be void, the right to such court would still exist, because it is not in the power of the crown to repeal an old law, and extinguish the rights and privileges of the subjects. Had the Governor appointed other Barons, all clamor against the legality of the Court of Exchequer must have ceased, and Mr. Van Dam's only advantage a change of his

Judges, unless Mr. Delancey and Mr. Philipse preferred seats in the Exchequer Bench to the Bench of the Supreme Court.

But nothing was less the intention of the contending parties than a just and friendly pacification; for, if the Governor wished the decision of the controversy upon fair terms, what was more natural than to have proposed at his first coming, either an amiable suit at law, or the submission of it to independent and unbiassed referees, either here or in England. And the injurious project of seeking a mean advantage against his antagonist, can only be atoned for by the virtuous jealousy it excited, in a Colony which derived many benefits from the troubles of the day.

As Mr. Smith's speech added many new proselytes to the opposition, the Governor grew alarmed, and, to counteract it, changed his distance and reproof into mean condescension to the people, the better to effect the new project of revenging himself upon the chief leaders by prosecutions at law. Persons of inferior stations were invited to the Fort and dined at his table, some of whom signed an address applauding the mildness of his administration.

The new Chief Justice, who had before laboured to indict Zenger, whose paper was the vehicle of invective and satire against the Governor, and his adherents, renewed his efforts in the term of October, calling their attention to certain low ballads, which he charged to be libels: "Sometimes (says the Judge) heavy, half-witted men get a knack of rhyming, but it is time to break them of it, when they grow abusive, insolent, and mischievous with it." The ballads being presented, were ordered to be burnt by the common whipper; and the inquest on their addressing the Governor for a proclamation, offering a reward for a discovery of the author, received a gracious answer.

The Council, about the same time, urged the Assembly to a conference, for detecting the writer of certain other libels in Zenger's journal. Several met accordingly with the Council Committee, who

were, Messrs. Clark, Harison, Colden, Livingston, Kennedy, Chief Justice Delancey, Courtlandt, Lane, and Horsmanden. The latter desired the concurrence of the House in an address to the Governor, for the prosecution of the printer, the detection of the author, and a proclamation stimulating the Magistrates to greater exertions for the preservation of peace. The Assembly met, and ordered the papers to be kept by their Clerk, postponing the consideration of the matter to a further day; and when that arrived, ordered the libels and proposal of the Council to lie on the table.

Despairing of any aid from the Assembly, they demanded their papers, and converting themselves instantly into a Privy Council, made an order for burning the libels, and then directed the following entry in their minutes :

“ At a Council held at Fort George, in New-York.  
the 2d of November, 1734 :

PRESENT,

His Excellency William Cosby, Esq. Captain General and Governor in Chief, &c.

Mr. Clarke,	Mr. Livingston,	Mr. Courtlandt,
Mr. Harison,	Mr. Kennedy,	Mr. Lane,
Dr. Colden,	Mr. Chief Justice,	Mr. Horsmanden.

“ Whereas, by an order of this Board of this day, some of John Peter Zenger's journals, entitled ‘ The New-York Weekly Journal, containing the freshest advices foreign and domestic,’ Nos. 7, 47, 48, 49, were ordered to be burnt by the hands of the common hangman or whipper, near the pillory in this city, on Wednesday the 6th inst. between the hours of eleven and twelve in the forenoon, as containing in them many things tending to sedition and faction, to bring his Majesty's government into contempt, and to disturb the peace thereof; and containing in them likewise not only reflections upon his Excellency the Governor in particular and the Legislature in general, but also upon the most considerable per-

sons in the most distinguished stations in this Province. It is therefore ordered, that the Mayor and Magistrates of this city do attend at the burning of the several papers or journals aforesaid, numbered as above mentioned."

When the Sheriff moved for the compliance of the Magistrates at the Quarter Sessions, the Court would not suffer the order to be entered, and the Aldermen offered a protest against it, as an arbitrary and illegal injunction. Harison, the Recorder, was present, and put to a defiance for its justification. He mentioned the example of the Lords in Sacheverel's case, and their proceedings against Bishop Burnet's pastoral letter, and withdrew. They forbid even their whipper to obey it, and his place was supplied by a negro slave of the Sheriff's; the Recorder, and a few dependants upon the Governor, honoring the solemnity of executing this edict with their presence. Not many days after Zenger, in pursuance of a proclamation, was seized, thrown into jail, and denied pen, ink and paper. His friends procured a habeas corpus for his enlargement. The exceptions to his return was argued by his counsel, Messrs. Alexander and Smith.

The prisoner swore, that, except the tools of his trade, he was not worth forty pounds in the world, and yet bail was exacted in the penalty of eight hundred pounds; upon this he was enlarged, and being well supported, prosecuted his paper.

Of the several bills before the House, which continued sitting to the 28th November, the Governor was most solicitous for that regulating the militia, and another to emit bills of credit to the value of twelve thousand pounds. Both were carried, to the great joy of the court party. By the offices and distinctions which the former enabled the Governor to confer, and the influence to be gained by the latter, he was enabled to employ the lower classes in constructing the intended fortifications, and, of course, had

a prospect of dividing and weakening the torrent of opposition.

Against the bill for emitting money, there was an instruction, requiring a clause to suspend its operation till the royal pleasure could be known. It was expedient to the Governor's aims, that the King's command should, nevertheless, be disobeyed, it being very naturally conjectured that, in a time of profound peace, a probationary law could not be very speedily confirmed. To exculpate the Governor, Mr. Chief Justice Delancey, after the bill was gone up to his Excellency, brought a copy of the royal prohibition to the Assembly, and requested a committee of their House to meet certain members of the Council, to form a joint address of both Houses importuning him to pass it.

Mr. Delancey the elder, Mr. Justice Philipse, and several others, met to execute the scheme that very evening, and the next day the address was reported, approved, and presented, but not without some opposition; for the country party carried, at the same time, a motion requesting the Governor to dissolve that Assembly, to which his friends the more readily yielded, as his Excellency agreed to take the odium to himself of refusing their request, in return for their intercession to save him from the indignation of the crown.\*

Exasperated at the menaces of the Governor, and their despair of prevailing upon the Assembly to check his designs, the demagogues formed the project of presenting an accusation against him to the King. The complaint was to be trusted to the superseded Chief Justice, but it was thought necessary that the design should be a secret till he was actually embarked; for, without leave of absence, he would endanger his seat in the House.

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\* The reader will find further instances of such artifices, naturally to be expected when the Colony Legislatures are in league to promote the interest of each other.

Mr. Morris had a farm on the sea-coast of New-Jersey, for which Province he was of the Council, and where he sometimes resided, as well for the discharge of his office, as the care of a very opulent fortune in that Colony. Before the ship was ready for the voyage, he asked leave to go home, and it was granted without further explanation. He repaired to Shrewsbury house, and made his dispositions without observation. From thence he took ship, nor, till his actual departure, was there any inquiry concerning the double construction of the permission he had obtained to authorize his absence from the House.

The Grand Jury of the term to which Zenger was bound over, refusing to indict him, Mr. Bradley the Attorney General, proceeded against him by information, and his patrons, to puzzle the prosecutor, ventured to impeach the authority of his Judges.

His counsel, in April term 1735, took oyer of their commissions, and signed and filed exceptions to them: 1st. To the tenure, which was will and pleasure, as contrary to the statute of William the third. 2dly. To the investiture of the same persons with the authority of the Common Pleas. 3dly. To the form, as not warranted by the common or statute law, or any act of the Colony. 4thly. To the want of evidence that the Council concurred in the appointments.

The Judges lost all temper at the tender of the exceptions, and desired the defendant's counsel to consider the consequences of their offer. They replied boldly, that they had: Mr. Smith added, that he was so well satisfied of the rights of the subject to except to the commission of his Judges, if he thought it illegal, that he would stake his life upon the question, and desired to be heard upon that point, as well as in support of the exceptions themselves.

The matter was adjourned, and upon Mr. Smith's renewing the motion, the next day (16th April), the Chief Justice, in great heat, said, "He would neither allow nor hear the exceptions. You thought to have gained a great deal of popularity and applause by

opposing this Court as you did the Court of the Exchequer, but you have brought it to that point, that either we must go from the bench, or *you* from the bar"—handing, at the same time, the minute to the Clerk to be entered:—"James Alexander, Esq. and William Smith, attorneys of this Court, having presumed (notwithstanding they were forewarned by the Court of *their displeasure* if they should do it) to sign, and having actually signed and put into Court, exceptions in the name of John Peter Zenger, thereby denying the legality of the Judges, their commissions, though in the usual form, and the *being* of this Supreme Court:

"It is therefore ordered, that, for the said contempt, the said James Alexander and William Smith be excluded from further practice in this Court, and that their names be struck out of the roll of the attorneys of this Court."

Mr. Alexander observed, that the exceptions went to the commissions and not to the *being* of the Court. "I think (replied the Chief Justice) that they are against the *being of the Court*." The counsel both denied it, insisting that the Court could exist, though all the commissions were void. The Judge then perceived his error, and confessed the distinction well taken. They urged, but in vain, that the entry might be altered. Mr. Alexander desired to be informed, whether they *rejected* or *overruled* the exceptions. Mr. Delancey owned that he knew not the difference. If you reject them, said the counsel, the defendant will make them a part of the proceedings by bill of exception; but if you overrule them, they will be so without a bill. Diffident and not discerning their aim, the Judges, for a present escape, said, they would hear them the next day; but, to avoid that, insisted that in conformity to the rule of the preceding day, their client should speak by other counsel. It was then remarked, that the order only inhibited their practising as attorneys, and no other answer was given, than that they meant to exclude them from acting in both capacities.

The defendant's case now wore a very gloomy complexion, for there were, at that day, but two other gentlemen of any reputation at the bar; Mr. Murray, as already has been shown, was a partisan of the Governor's; and Mr. Chambers, the other, more distinguished for a knack at haranguing a jury than his erudition in the law. Him the Court assigned as counsel to Zenger, though he had no inclination to serve him. He, therefore, abandoned the mode of defence chalked out by his first advocates, and taking ground safer to himself, pleaded the general issue for his client, and obtained a rule for a struck jury.

The trial was brought on at the Court in July, and nothing omitted by the silenced lawyers to give it a favourable issue. The press had groaned all the preceding vacation, with every species of composition, tending to animate, alarm, inform, or captivate the minds of the multitude; and the stratagem to deprive the defendant of help, disserved the end for which it was intended. Aware of the inadmissibility of all proof to justify the libels, they had the art to exhibit them to the public by the press, and at clubs, and other meetings for private conversation; and, considering the inflamed state of a small county, consisting at that time of less than a thousand freeholders qualified for jurors, it was easy to let every man perfectly into the full merits of the defence. Besides, he drew some advantages from a struck jury, since he could nearly conjecture, out of a pannel of twenty-four men, which of the twelve would be charged with his cause.

These preparations being made, Mr. Hamilton, who had been secretly engaged, presented himself on the day of trial as the champion of liberty. He was of one of the Inns of Court, an opulent citizen of Philadelphia, in high reputation at the bar. He had art, eloquence, vivacity, and humour, was ambitious of fame, negligent of nothing to ensure success, and possessed a confidence which no terrors could awe. He set out by asserting with a firmness una-

bashed, and which often goes far to persuade, that the matters charged as scandal were true, and therefore no libels; and indulged such a vein of ridicule against the law advanced by the Judges, that a libel was the more dangerous for its truth, that the ignorant audience, judging from the superiority of the bar to the bench, in talents and assurance, held the Court in contempt, and thought the refusal of the Judges to permit evidence of the truth of the publications, added to the tyranny and oppression of the times.

His debates with the Court were protracted, till he could turn with the greater address to the jury in the tone of complaint, and artfully convert the guilty nakedness of the cause of his client into a defence. Having captivated their minds into a belief that, if the scandals were true, Zenger was not criminal, he recapitulated the passages in the journals supposed to have given umbrage to the Government, and for ridiculing the uncertainty of Mr. Attorney's inuendoes. He made others with artful allusions to past events, which the auditors had read or heard and believed to be true; and when he left his client in those hands, such was the fraudulent dexterity of the orator, and the severity of his invectives upon the Governor and his adherents, that the jury missing the true issue before them, they, as if triers of their rulers rather than Zenger, pronounced the criminal innocent because they believed *them* to be guilty.

The instant the verdict was known, the impetuous acclamation shouted by the audience shook the Hall, and a mixture of amazement, terror, and wrath appeared in the bench. One of the Judges threatened an imprisonment of the leader in this tumult if he could be discovered. A threat unseasonably uttered, unless they had courage and ability to put it in execution; for it provoked a justification from Capt. Norris, a son of the knighted Admiral of that name, and connected with Chief Justice Morris by the marriage of his daughter, who pertly declared, that huzzas were common in Westminster Hall, and were

very loud in the acquittal of the seven Bishops. The Judges had no time for a reply, for the shouts were instantly repeated, and Mr. Hamilton was conducted from the Hall by the crowd to a splendid entertainment. The whole city renewed the compliment at his departure the next day; he entered the barge under a salute of cannon, and the Corporation presented him with the freedom of the city in a gold box, on which its arms were engraved, encircled with the words, “*Demersæ leges—time facta libertas—hæc tandem emergunt;*” in a flying garter within, “*Non nummis, virtute paratur,*” and on the other front, “*Ita cuique eveniat ut de respublica meruit.*”

As it happens on such occasions as these, the scribblers of the day grew more wanton than ever, and a low printer, dandled upon the knee of popular applause, gave into prodigalities, which contributed to his indolence, and ended, as the ferment subsided, in the ruin of his family.

The contending parties now left no stone unturned to gratify their revenge. The English patentees of the “*Oblong,*” by Mr. Dunbar their agent, who connected himself with Mr. Cosby, and was stimulated by Harison, urged measures in the Court of Chancery against the New-York patentees. Alexander and Smith were interested under the last grant, and excepted to Cosby’s exercise of the Chancellor’s authority, which the Governor overruled. I have elsewhere observed, that the Assemblies were jealous of this Court in the hands of a Governor. The Colony Grantees, therefore, hoped to excite the present members to renew the attack, and with that view, remonstrated against the proceedings as soon as the House met in autumn; nor did Zenger’s counsel omit to lay before them a complaint against the Judges, for depriving them of their practice. They were heard by the committee of grievances on the 23d October, a copy of the complaint ordered to be served on the Judges, and an answer required in forty days. The citizens, also, by a petition, suggesting that the long session of the Assembly was a grievance, urged a

new attempt for a dissolution, which the Governor again refused, though the members unanimously asked his consent. They then resolved, that the Court of Chancery under the exercise of a Governor, without consent of the General Assembly, is contrary to law, unwarrantable, and of dangerous consequence to the liberties and properties of the people.

The opposition now taking courage, informed the House, by a petition from Queen's County, that the long continuance of the Assembly occasioned a decay of trade and a depreciation of lands, which so highly incensed the majority as to occasion a vote, that the charge was an unjust and audacious misrepresentation. Zenger's counsel, about the same time, insinuated that the distant day assigned for the answer of the Judges with their complaints was an illusion of that justice they had a right to expect. Disgusted by this freedom, the members resolved that it should not *ever* be read, and the very next day adjourned, with the Governor's consent, to the latter end of March.

It was a parting for ever, for Mr. Cosby died on the 10th of that month,\* and as the reader may suppose, almost universally detested; for, besides the aforementioned instances of imprudence into which he was willingly led by the men of his confidence, he increased the number of his enemies by destroying certain deeds to the City of Albany, and a project he had formed for a re-survey of the old patents on Long Island. The Mohawks sagaciously dreading the rapid progress of population, had conveyed a very valuable part of their territory to the Corporation, to take effect upon the total dissolution of their tribe. It was produced to convince the Governor of the injustice of granting it to private patentees; but after the perusal of it, which he perfidiously requested for his satisfaction, he threw it into the fire, and it was instantly consumed.

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\* 10th March, 1736.

His design against the people of Long Island originated from the same motive : he hoped to enrich himself by the acquisition of lands already improved, as well as by fees for the new grants.

It cannot be denied, that our old grants and patents are very inaccurately penned, nor that, in some instances, the proprietors have taken advantages of the description of their limits by marked trees, Indian names of places, and other uncertain boundaries, to extend their possessions too far ; and certainly, if they were confined to the true object of their grants, they would have no just cause of complaint : but a resurvey for this purpose cannot be executed without difficulty and danger, nor attempted without spreading universal discontent. Though a second patent will not convey what was comprehended in the first grant, yet a wise and generous ruler will perceive that the small emolument, which he may add to his quit-rents, is overbalanced by the innumerable mischiefs flowing from the increase of animosities and the multiplication of law-suits, and find himself (if his intentions are upright) not a little embarrassed in the construction of the ancient grants of the country, most of which are derived from the Duke of York, when a subject. At that early day the great object was to gain a dominion over these vast deserts, by joining occupancy to discovery, for the effectual exclusion of any other European power. To accomplish that end, grants were penned with all the negligence of liberality, and the giver being benefited more by his seeming bounty, than the adventurous grantee, who could not, even after acquiring his title from the Duke and the Crown, cultivate the soil in safety, without buying peace from the Savages, and that as often as they were pleased to renew their claims. To this the modern interpreter of the old grants, if he will guard against error or injustice, must necessarily attend. But who could confide in a Governor, stimulated to the measure, not so much by a regard to the interests of his master, as his own avarice. Long Island, at that time, comprehended a third part of the improved

lands of the Colony, and no man knowing whether his best improved possessions might not fall beyond the lines assigned for his tract, the inhabitants were almost universally alarmed, and were as suspicious of the Governor and his re-survey, as the patricians of Rome were formerly of the Gracchi and their agrarian laws.

But no representation, repugnant to his avarice, had any influence upon Mr. Cosby. The weakness of his understanding rendered him reprehensible even to fear. In answer to the great objection, that a certain doctrine was against law, he sillily replied, "how, gentlemen, do you think I mind that: alas! I have a great interest in England." It is some extenuation of his faults, that he was the dupe of others; and an apology for Mr. Delancey, his chief minister, that he was then a young man, ill read in a profession, which he took up without aid, and, by his education abroad, was little acquainted with the affairs of the Colony.

Mr. Cosby's remains were buried in the Chapel within the walls of the Fort, in which he died. His widow repaired to England after one of her daughters, advantageously connected with Lord Augustus Fitzroy, son to the Duke of Grafton. The match was clandestinely brought about by the intrigues of Mrs. Cosby, Lord Augustus being then on his travels through the provinces; and to blind his relations and secure the Governor from the wrath of his father, then a favourite of King George the Second, a mock prosecution was instituted against Campbell the parson, who had scaled the Fort walls and solemnized the nuptials, without a written license from the Governor, or any publication of the banns, contrary to usage, though not against the law of the Colony.

The exultation of the populace occasioned by Mr. Cosby's death, and the expectation that Mr. Van Dam was again to take the helm, was excessive, for they had despaired of any success from Mr. Morris's complaints; news arriving in February, that the Lords of the committee, after hearing counsel against the Governor, had, on the 7th of November before,

reported, that the reasons for removing him were insufficient. The celebrated Mr. Murray, afterwards Lord Mansfield, retained against him, exerted himself on this occasion, and introduced his accusation with the delicate observation, that if his Majesty could delegate his virtues as easily as his authority, their Lordships would not have been called to the trouble of that hearing. But it was not many hours before the triumph of the patriots was checked by the report, that Van Dam had been privately suspended since the 24th of the preceding November.

The Council—Messrs. Clarke, Alexander, Van Horne, Kennedy, Delancey, Courtlandt, Lane, and Horsmanden—met, and administered the oaths to Mr. Clarke as the President, who issued a proclamation, announcing the succession as by the unanimous opinion of the Board. Mr. Alexander, who was struck at this meeting with the act of suspension, and had really given no opinion, was obliged, to save his popularity, to publish his non-concurrence, and impeach the truth of the proclamation.

Van Dam the next day asserting his title, called upon Mrs. Cosby for the great seal with the commission and instructions, and when denied access, he demanded them in writing of Mr. Clarke, to whom they had been delivered. The possessor insisted upon the suspension, appealing to the King. The other addressed the people by a protest against Clarke's proceedings, and the Council who qualified him, and all their aiders and abettors, declaring that Cosby was delirious and *non compos* at the moment of the suspension, and the act, therefore, invalid: that if he had been sane, his power was sufficient to exclude him from acting as a counsellor, but not to interrupt his succession to the command: that it lost its efficacy at the death of the Governor, and that the Council had no authority to qualify Mr. Clarke.

Clarke disregarding this claim of his antagonist, though supported by the popular voice, adjourned the Assembly, and drove Van Dam to insist, as they

did not meet according to the prior adjournment, that Clarke's act was invalid, himself guilty of a very high crime, and the House dissolved. The members, however, met on the day to which Mr. Clarke adjourned them, and being bewildered by their repugnant pretensions, and unwilling to enlist on the one side or the other, returned home and continued under repeated adjournments, till the Crown interfered for a decision of the controversy.

This anarchy urged to no open violence till the 14th October, when by the charter of the capital, the officers of the year, who were to be nominated or elected on the 29th September, were to take the necessary oaths, and begin the discharge of their trusts.

Van Dam's party prevailed at the election for the Aldermen and Common Council: the citizens choosing such as would act with a Mayor, Recorder, Sheriff, and Coroner, of his appointing, as President of the Council; and he accordingly named—Cornelius Van Horne, Mayor; Mr. Smith, Recorder; Mr. Ashfield, Sheriff; and Mr. Nicholls, Coroner. Mr. Clarke concurred in none of these but the last, and constituted Mr. Richard to be Mayor; Mr. Horsmanden, Recorder, and Mr. Cosby to be Sheriff; and by a proclamation of the 1st October, warned Van Dam's officers against the danger of assuming any authority under his appointments.

The opposition lost all temper at this juncture, and to animate their followers, boldly menaced Clarke, in print, with a prosecution. An extract from a paper of that day will show the excess to which the spirit of party was carried.

“Whatever desire some of the subjects of the British dominions may have to be above the law and tread it under foot, yet the law ought to be and will, at the long run, get above them. It is too strong a body to contend with, and he who does it will hardly escape a fall. Of this the Honourable Francis Ha-

riſon, Eſq. counſellor, is a recent example.\* All the power he had to ſupport him could not prevent a fall. If Mr. Clarke be not entitled to the adminiſtration, I believe a grand jury of New-York will think him guilty of high treaſon for uſurping, and indict him accordingly. I do not believe that they will think his ſuperiority, or their ſubordination, will excuſe them for not doing it. Their oath is to *preſent all offenders*. I hitherto have not heard of any exception in it, either of counſellors or commanders-in-chief. They are as ſubject to the law as the meanest man in New-York, let their deſire be ever ſo ſtrong to be above it: and if the grand jury indicts, I doubt not the Court will iſſue the proceſs thereof to apprehend him and try him by twelve lawful men of New-York, where the fact was committed. If he is taken, I doubt not but that he will have the liberty of pleading his ſuperiority and the ſubordination of the Court and jury againſt their juriſdiction. I doubt not but that the plea will be fully heard as it ought to be, and that his lawyers may ſpeak freely in ſupport of it, notwithſtanding the late precedents of condemning unheard upon pleas to juriſdiction, and of ſilencing lawyers for offering them, and notwithſtanding all the part he had in making of ſuch precedents; and if his lawyers can make it out, that he is above and out of the reach of the law, the Court ought to allow the plea; but if they can't, as I believe they cannot, he muſt there hold up his hand as well as the meanest and moſt arch pickpocket that ever was in New-York, and either *confess* and be hanged, or ſay *not guilty* and put himſelf for his trial on God and his country: and if ſuch be his caſe, I hope *juſtice* he may depend upon. But what charity twelve good men of New-York, ſworn to try him, will have for him, he, by running over his paſt ſervices to the properties, liberties, and privileges of this country, may

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\* He went off privately to England in 1735. It was imagined that Mr. Coſby ſent him to watch and oppoſe the attempts of Col. Morris, and that the Governor's death plunged him into poverty and prevented his return. He did not long ſurvive that event.

in some measure be able to judge. But, however, as a Christian I shall be obliged, in that case, to join in the clerk's prayer, and say, *God send you a good deliverance.*"

These hints were formidable, because the rage of the multitude was so exasperated, and their confidence in the demagogues so absolute, that the latter had only to advise Van Dam to appoint Judges to accomplish the tragedy of cutting off the Commander-in-chief, who actually called into the Fort all the officers and soldiers of the independent companies, for his protection against the expected horrors of the approaching day for qualifying the magistrates of the metropolis. During these agitations Mr. Morris, whose arrival at Boston was not known here till the 18th September, was impatiently expected, and the rather because he had only given his adherents liberty to think favourably of his restoration. He did not reach Morrisania till the 7th October. He was met the day after by a vast concourse, and conducted with loud acclamations to a meeting of the chiefs of the party. Having learnt to what extremes the contests were advanced, and being importuned for his advice, he replied with a grave tone, "If you don't hang them, they will hang you"—and the evening was spent, after dispersing money from the windows of the house to the rabble in the streets, with a tempestuous festivity and joy. He declared it as his own opinion, that Van Dam had a right to the administration; that he was willing to execute the office of Chief Justice under him; that the Assembly was dissolved, and that force ought to be opposed to force, if Clarke insisted upon his authority.

The Assembly was convened on the 12th, and Mr. Morris, the next day, obtained their leave to visit New-Jersey, where he said the public service required his presence. Van Dam's magistrates had resolved to act the next day, and resolutions were taken to support them by violence; but fortunately for both parties, within twenty-four hours of the erup-

tion of the meditated civil war, the brigantine *Endeavour* arrived from England, with despatches from the government to Mr. Clarke, as President and Commander-in-chief of the Province, enclosing an instruction altering the prayers for the Royal Family, upon the marriage of the Prince and Princess of Wales.

From that moment his opposers became mute and abashed, and his officers were sworn in and obeyed. Mr. Morris was publicly charged with the knowledge of this act of government. It was asserted, that his son, Robert, who accompanied him, had revealed it at Boston, declaring, that Mr. Clarke would receive the instruction by a vessel which had already arrived; and to confirm the accusation, it was observed, that it bore date the 1st July, several weeks before he embarked. But his friends treated it as a calumny, not only because so base a concealment was inconsistent with his character and his own positive denial, but with the safety of his son, Lewis, and Ashfield, his son-in-law, who had rendered themselves very obnoxious in supporting Mr. Van Dam.

Mr. Clarke delivered his first speech to the Assembly in the calm of the so much dreaded 14th of October. He challenged their promise to his predecessor for supplying the deficiency of the revenue, and repeated his instances for the encouragement of ship building, persuaded to the cultivation of hemp, finishing the fortifications, erecting a new fort at the head of the Mohawk river, and the settlements of Smiths in the Seneca country; and to humor the clamors within doors, he consented to introduce the practice, which has ever since prevailed, of absenting himself from the Council, when they sit as a branch of the Legislature.

During the session, his hands were strengthened by his advancement to the rank of Lieutenant Governor. The commission was dated the 30th July, and published here on the 30th October; but yet nothing of any considerable moment was transacted, and after an address to congratulate the King on the

marriage of the Prince of Wales, and the passing of a few common bills, he put an end to a peaceful, inactive session, by a prorogation on the 7th of November.

He met them again in April, and earnestly urged the payment of the arrears due to the public creditors, occasioned by the defect of their funds, and a new act for supporting the government, the other being nearly expired. But little could be expected from an Assembly fearful of their constituents, and consisting of a respectable minority intent upon a dissolution. Hence their consent to a motion of Mr. Morris, junior's, for leave to bring in a bill for triennial elections and the exclusion of Crown officers. Mr. Clarke soon discovered, that his Assembly was grown dastardly, that the debts of the Colony amounted to near nine thousand pounds, and that they meant to postpone the payment to prolong their own existence. He artfully made his court to the collective body, by a speech to the House in terms of real or affected disgust, charging them with a neglect of the interests both of the Crown and Colony, and then dissolved an Assembly elected in 1728, of whom their constituents were tired, as he suggested in his speech.

The Lieutenant Governor was an Englishman. His uncle, Mr. Blaithwait, procured the Secretary's place for him, and sent him out with it early in the reign of Queen Anne. He had genius, but no other than a common writing-school education; nor did he add to his stock by reading, for he was more intent upon improving his fortune than his mind. He was sensible, artful, active, cautious; had a perfect command of his temper, and was, in his address, specious and civil. Nor was any man better acquainted with the Colony and its affairs. As a Crown officer, he was careful not to lose the favour of any Governor, and still more assiduous to please when he became the second at the Council Board. He shared a part of the odium which fell upon Mr. Cosby, but escaped much more of it by a closer attachment than before to

his rural villa on the edge of Hempstead plains, and left it to Mr. Delancey to enjoy the praise or blame of being the Sejanus of that Governor. The public confusions contributed to the gratification of his wishes. Dreading Van Dam's power, his fellow-counsellors easily concurred in persuading Cosby to suspend him, and the anarchy which instantly ensued upon that Governor's decease, and his own representations, left the ministry no time to think of any other person for the place of Lieutenant Governor. Nothing now alarmed him but the arrival of a Governor in chief. Lord Delaware had early engaged the promise of the Minister; but a peer of the realm was only to be induced to accept so humiliating a station by the prospect of a speedy repair of his finances, and Mr. Clarke knew how to improve a disposition so favorable to his own ends. His Lordship declared, that Mr. Clarke's letters concerning the Colony were perplexed and discouraging. Those who were acquainted with Mr. Clarke, knew that if he wrote obscurely upon such a subject, it must have been with design.

The country party found no difficulty in securing a majority at the election. The citizens chose Mr. Alexander of the Council for one of their representatives. The House met about midsummer 1737, and Mr. Morris, junior, was placed in the chair.

Mr. Clarke had paved the way towards a reconciliation by the dissolution, and, as he had shaken the attachment of his old friends, perceived a necessity for caution in the management of the heated patriots of the new House; for, till they had time to offend, he could hope for nothing by another dissolution.—His speech, according to the exigency of the day, was a short one, and asked nothing.

He had dissolved the late House, as he suggested, in tenderness to the King's honor and the true interest of the Colony, and was happy to find the people had answered his wishes in so proper a choice of new members. He intended to meet the Chiefs of the confederate Indian cantons to obstruct the

sale to the French of a tract in the territory of the Seneca tribe, called Irondequot, on the south side of Lake Ontario, convenient for erecting a commercial magazine, that might be injurious to ours at Oswego; and all he had to recommend, was their aid in perfecting the harmony already begun, in which he promised his assistance.

They thanked him for the dissolution, and applauded his sagacity; wished him a good voyage to Albany, and hoped their next meeting would have consequences answerable to its end.

They sat only two days; but entered on their journals as resolved in future to publish the names of the voters for and against any question; and gave leave to their speaker, which is singular, to bring in a variety of bills: one to regulate elections; another for frequent elections; and others for appointing an agent in Great Britain, independent of the Governor; for lowering the interest of money, and for regulating and establishing fees. Mr. Alexander, immediately after, was permitted to offer others, to encourage the importation of whites and servants; the manufacture of iron and hemp; and the preventing of frauds in flour and other products intended for exportation. These acts had the designed effect upon the vulgar, and were applauded as indisputable testimonials of the patriotism of their leaders.

Mr. Clarke went to Albany, and had a conference with the Indians, but was not able to accomplish his designs. Irondequot is a vale of an excellent soil; and he was desirous of purchasing it from the Indians, not only to defeat the intentions of the French, but to promote settlements there, for the easier subsistence of the garrison and traders at Oswego. But he established an interpreter, a gunsmith, and three others among the Senecas, to watch and circumvent the intrigues of the French, and prevailed upon the tribes to prohibit any buildings in their canton.

He was well apprised that the next meeting of the Assembly would call for the utmost exertion of his abilities. Cosby's antagonists, to protect themselves.

had taught lessons to the multitude, now to be carried into practice, if they would escape the contempt they had brought upon the members of the last House.

The Council, on the other hand, headed the remains of the Cosbyan party, and were not a little disgusted at the late dissolution, which had completed the triumph of their adversaries. Both parties were distrustful of the Lieutenant Governor, and upon the watch to engage him in their interests.

He had to curb the intemperate zeal of the Assembly, to quiet the Council, and prevent the resentment of the crown. But there was danger in humoring the Council; for an unmanageable Assembly prompts to suspicions of incapacity, and would either be followed with a loss of his office, or the speedy arrival of a Governor in Chief: add to this, that new supplies were necessary for the discharge of public debts, and the support of the government in future; and that the leaders of the two contending branches of the Legislature were men animated by a spirit of revenge—Mr. Chief Justice Delancey swaying the councils of the Upper House, while Colonel Morris his predecessor, his son Lewis, the speaker, and Mr. Alexander, undoubtedly had the confidence of the Assembly.

The Governor's interest induced him to take a middle path; and by his art and prudence, a long, active session, from the 23d August to the 16th December, terminated in peace, which the turbulency of the late administration rendered doubly agreeable.

He opened the session with a conciliatory speech; applauded the proofs left upon their journals, in April, of their attention to the state of the colony; tenderly reminded them, that the crown's right of disallowing the colony laws, rendered it useless to press him to ineffectual concurrences; touched upon the deficiency of the funds; commended their loyalty, and asked for a revenue; intimated his anxiety for the support of Oswego, and the extent of the Indian commerce, which were great objects; and promised his assent to all bills that would advance the welfare of the colony.

The address, unusually copious, bold, and coarse, seizes his compliments as promises, which they mean to put to the trial; stigmatizes the last Assembly as betrayers of the rights of the people, by detestable submissions to prolong their political life: after which they argue with some earnestness upon the propriety of frequent and uninfluenced elections; the utility of an agent in Great Britain dependent only upon the House; the propriety of establishing courts, and especially Courts of Equity, and the fees of officers, by Legislative acts, instead of ordinances. They proceeded then to obviate the ordinary objections drawn from the prerogative, and a due obedience to the royal instructions. They imputed the deficiency of the revenue to prodigality; impeach their predecessors in granting permanent funds, and tax the receivers with ingratitude; roundly assure him that they mean to discontinue that practice; “for,” to use their words, “you are not to expect that we either will raise sums unfit to be raised, or put what we shall raise into the power of a Governor to misapply, if we can prevent it; nor shall we make up any other deficiencies than what we conceive are fit and just to be paid, or continue what support or revenue we shall raise, for any longer time than one year; nor do we think it convenient to do even that, until such laws are passed as we conceive necessary for the safety of the inhabitants of this colony, who have reposed a trust in us, for that only purpose, and which we are sure you will think it reasonable we should act agreeably to; and, by the grace of God, we will endeavour not to deceive them.” In honor to themselves, they compliment him for his neglecting to influence the late elections, and take it as a pledge of his good conduct in future. Throughout the whole, they are cautious to promise him nothing, but a vigilance for the public interest; and when they thank him for his promises, they impute them to a consciousness that they are not favors, but duties; and if he performs them, they will then consider him as fulfilling the commands and copying the example of

the King, "who makes the good and happiness of his subjects his chiefest care and greatest glory."

Mr. Clarke, who knew that all this was *concio ad populum*, far from intimating the least displeasure at its asperity, prudently engaged his assent to the election bills, or any others consistent with his duty to the crown; and that in every condition of life, the province should have his best services.

The old party had made some efforts at the election, but with little success. Their most strenuous exertions were in the city, during the session to introduce Adolph Philipse, the late speaker, in the place of Gerrit Van Horne, a deceased member, whose son offered himself in the place of his father.

Before Cosby the Sheriff had made a return of Mr. Philipse, petitions were preferred by the other candidate and his electors, complaining of partiality; upon which the House ordered, that neither of them should sit, till the conduct of the Sheriff had been examined and considered.

Mr. Smith appeared as counsel for Van Horne, and insisted that Philipse should distinguish which of the allegations of his client he denied or confessed, that time might be saved in the exhibition of the proofs. His antagonist, more consistent with the usage of Parliament, moved and carried a majority for a scrutiny of the votes.

This success provoked an attack upon Mr. Alexander, who was of the minority on that question. It was insisted that, as a member of the Council, he ought not to be admitted to sit in the Lower House. The result was, a promise on his part that, as he had not, since his election, so he would not act in Council during the continuance of that Assembly; and a resolve, that while he kept it, he was duly qualified, but that on the breach of it, he should be expelled.

Van Horne and Philipse were directed to exchange lists of the exceptionable electors; but the Sheriff and Van Horne were first heard, and the former acquitted of the charge of misbehaviour. In the debates between the candidates, Mr. Smith made a question,

whether the Jews were qualified for electors, some of them having voted for Mr. Philipse. The cavil was taken up hastily in one day, and referred for argument on the next; and a resolve carried against the Hebrews by the mere dint of eloquence.

The auditors of this memorable debate of the 23d September, never mention it without the highest encomiums upon the art of the orator.\*

Mr. Murray, as counsel for Mr. Philipse, drily urged the authority of the election law, giving a vote to *all* freeholders of competent estates, without excepting the descendants of Abraham, according to the flesh; and with astonishment heard a reply, which captivated the audience into an opinion, that the exception must be implied for the honor of Christianity and the preservation of the constitution. The whole history of the conduct of England against the Jews, was displayed on this occasion, and arguments thence artfully deduced against their claims to the civil rights of citizenship. After expressing the emotions of pity naturally arising upon a detail of their sufferings under the avaricious and barbarous policy of ancient times, he turned the attention of his hearers to that mystery of love and terror manifested in the sacrifice of Christ; and so pathetically described the bloody tragedy at Mount Calvary, that a member cried out with agony and in tears, beseeching him to desist, and declaring his conviction. Many others wept; and the unfortunate Israelites were content to lose their votes, could they escape with their lives; for some auditors of weak nerves and strong zeal, were so inflamed by this oratory, that but for the interposition of their demagogues, and the votes of the House in their favour, the whole tribe in this disper-

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\* Mr. Smith was born 8th October, 1697, at Newport Pagnel, Buckinghamshire, England; was then at the age of 40: he had his first education from Mr. Stannard, the minister of Simpson in Bucks, and Mr. Woodward and Mr. Lettin, of Newport Pagnel in that county. He left London with his father's family, 24th of May, 1715, and arrived at New-York 17th of August in the same year.

sion would have been massacred that very day, for the sin of their ancestors in crucifying Jesus of Nazareth, and imprecating his innocent blood upon themselves and their children.

It is at such moments that the arts of persuasion show their power, and few men were more eminently possessed of them than Van Horne's counsellor. He had the natural advantages of figure, voice, vivacity, memory, imagination, promptness, strong passions, volubility, invention, and a taste for ornament. These talents were improved by the assiduous industry of a robust constitution, with uninterrupted health and temperance, in the pursuit of various branches of science, and particularly in the law and theology. His progress in the latter was the more extensive, from an early turn to a life of piety and devotion. He studied the Scriptures in their originals, when young, and in advanced life they were so familiar to him, that he often read them to his family in English from the Hebrew or Greek, without the least hesitation. He was bred a Dissenter in Buckinghamshire, and attached to the doctrines of Calvin: a great part of his time was spent in the works, French, English, and Latin, of the most celebrated divines of that stamp. He was for some time in suspense about entering into the service of the church. Dr. Colman of Boston, upon the perusal of a letter of his penning, in the name of the Presbyterian Church of New-York, requesting a minister to take the care of it, declared that no man could be more fit than he who had so well described the character of a proper subject for that vacancy. These things are mentioned, to account for that surprise of his auditors at that *copia* and oratory which Mr. Smith indulged, when he laid aside his law books and took up the Bible in the debate I have mentioned. He imagined that the House would reject the votes of all the non-resident freeholders, and if the Jewish voices were struck out of the poll-lists, that his client would prevail. His religious and political creed were both inflamed by the heat of the times. It was natural to a mind trembling several

years past for the liberties of the colony, and himself then under the rod of oppression, for asserting them, to take fire at the prospect of the most distant inlet of mischief. And perhaps he was not himself conscious at that time, of the length to which his transition, from the impolicy of a Jewish interposition in the legislation of a Christian community, to the severity of exercising it, would carry him. That severity was then to be justified, and to this he reconciled his judges by an affecting representation of the agonies of the Cross. He prepared no notes for this memorable speech: it was delivered within a few hours after the thought of an implicative exception in the election act was first conceived; and the astonishment of the audience rose the higher, by the rare instance of so much pulpit eloquence from a law character at the bar of the House.

But though the Israelites were rejected, the non-resident voices were accepted, and Mr. Philipse, with his nephew the second Justice, admitted to a share in councils which they would neither sway nor control. And yet this act of justice to the old speaker gave great offence without doors; the majority adopting Mr. Alexander's erroneous opinion, contrary to legal exposition and parliamentary usage, that a personal residence was as requisite in the elector, as communion of interests by a competent freehold.

The Judges too, about this time grew not only impatient under the reproaches incurred by the order for silencing Zenger's counsel, but fearful of its consequences. The populace wishing for an opportunity, by action for damages, to repay them the losses they had sustained, their resentment rose the higher, as Mr. Smith, who had lately visited Virginia, was importuned to remove to that colony. To effect a reconciliation, the Lieutenant Governor and Mr. Murray were employed to feel the pulses of the two popular lawyers, and testify the wishes of the Judges that they would return to the bar. After some punctilios, *honore servando*, the Judges agreed to cancel their injurious order, upon the promise of the latter

to release all actions and damages, under the pretext of gratifying the timidity of their wives, who were said to be in constant anxiety from the apprehension of prosecutions and outrages. And in the October Term this year, Mr. Alexander and Mr. Smith appeared again at the bar, without any further condescensions on either side.

The patriots obtained a variety of popular laws in the course of the session. The militia was modelled; the practice of the law amended; triennial elections ordained; the importation of base copper money restrained; courts for the summary decision of petty suits established; a mathematical and grammar school encouraged; extravagant usury prohibited by the reduction of interest from eight to seven per cent.; pedlers regulated; Oswego supported, and the Indian commerce promoted; paper money emitted, and a Loan Office erected; provision made for preserving the metropolis from destruction by fires; and the precedent set for compelling the officers of government to a reliance upon the annual provision of the Assembly for their support.

But these institutions were nevertheless inadequate to the elevated expectations of the multitude, and short of the intentions of their leaders. Other bills were brought in, which did not at that time pass into laws. They meant to regulate elections, and totally to exclude the influence of the crown; to appoint inspectors of exported flour; to restrain the sale of strong liquors to apprentices and servants, and to others, upon credit; to reduce the fees of officers; to engross the appointment of an agent at the Court of Great Britain; to promote ship-building; and to give the Quakers a further indulgence, by exempting them from the trouble of producing the certificates of the quarterly meetings, required by the late act, of their having been members of that persuasion a year before the offer of themselves for an affirmation. Some of these bills failed by the opposition of the Council, who, on the day of the final debates between Van Horne and Philipse. (12th

October), signified their concurrence to two bills in a way not usual, by their Clerk. There had never been more than three instances of that kind, and those were messages to the late Assembly, between whom and the Council there was a perfect concord upon party principles. The ancient usage of the Council, was to send by one of their own members; and the present Assembly resented the innovation, and demanded satisfaction for the insult.

The Clerk brought an answer to it a few days afterwards, and was immediately ordered back with a peremptory declaration, that the Assembly would thenceforth receive no message from the Council by that officer.

They then began to cavil with the most favourite bills of the majority, and embarrass their progress by proposing amendments, and sent others to the Lieutenant Governor with intimation to the House of their concurrence, and were also silent as to some which they either rejected or neglected to the close of the session, and which, for that reason, were never passed into laws. They, however, abandoned the attempt for maintaining an intercourse by their Clerk, a novelty weakly introduced, because in itself unjustifiable, which exposed them to the contempt of the people, and would doubtless (if by this folly a stagnation of the public business had ensued) have incurred, as every futile controversy of that House will with a popular Assembly, the displeasure of the Crown and a new set of Counsellors.

To the triennial act, they proposed a variety of amendments; some the Assembly rejected; the Council adhered to all of them. The lower House demanded a conference. They consented, and appointed Messrs. Livingston, Delancey, and Horsmanden, their managers. The Assembly nominated theirs, but bound them by instructions. When the joint committees met, the managers for the Council only delivered a paper with their reasons for their amendments. They were reported, and the House signified that they were not satisfactory, and repeated their

demand of a free conference. This was assented to with notice of the time and place. New managers were nominated by the Assembly, who reporting in favour of the amendments, they were accordingly adopted. Mr. Alexander was of this last committee. The bill, as it was at first framed, had absurdly, in derogation of the prerogative, made it necessary to hold an Assembly in the capital and not elsewhere. But the loss of bills for regulating elections and adjusting the fees of officers, contributed greatly to the general dissatisfaction; they were both carried up to the Council, who were silent as to the former, till stimulated by a message concerning its progress, and then apologized for their non-concurrence, till they could be informed of all the services the officers were to perform, which were not then to be obtained in the multiplicity of business and at the close of the session. The act against corruption in elections, which also went up late, was retarded by the proposal of amendments; upon the receipt of which, Mr. Alexander was desirous to appeal to the people, by printing both the bill and the alterations. He lost his motion by a single voice, and the bill was never returned.

Mr. Clarke put an end to the session three days afterwards, affecting the highest satisfaction with their conduct, and expressing his gratitude for their regard to his Majesty's honor. He had procured the pay account of the deficiency of the revenue and the augmentation of his own salary to fifteen hundred and sixty pounds, and acquired the general esteem without risking the resentment of his master, for the triennial act was soon after repealed in England, and the lower branches of the Legislature divided between them the odium of all the disappointments both of the Crown and the subject.

The Assembly, before they separated, entered a protest on their journals against the new practice of the Council in concealing their concurrence in several laws they passed by the Lieutenant Governor. which had its effect, for it has not since been adhered

to. This is a proof that Mr. Clarke was privy to the design, it being unusual to re-assemble after passing all the laws.

They sent the Speaker to him with their thanks, and requested of his favourable representation to procure the Royal approbation of the triennial act, and then adjourned themselves with his leave.

The Cosbyan party had, for some time, considered the Lieutenant Governor as a deserter. He knew this, and grew daily suspicious of their power to injure him by the agency of the Council, whose consent was necessary, not only in the appointment of officers, but the grant of the waste lands of the Crown, from which the Governor, at that day, derived the greater part of his profits and emoluments; but it was also essential to his interest to be upon good terms with the Assembly, for upon them he depended for the continuation of his salary, and he flattered himself that he should still be able to re-establish the practice of a provision for years.

In this dilemma he determined to undermine the popular leaders. This he effected by encouraging them with hopes of preferment, judging that, if they took the bait, the people, whom they had brought to despise all Senators in office, would hold them in contempt, and that then he could easily attain his own objects, by the dread of a dissolution; such a turn would, at the same time, render the Council obsequious to his interest in the land-office, where he derived an income, not only as Lieutenant Governor, but as the Secretary and Clerk.

His stratagem succeeded to his wishes. Mr. Morris the Speaker, Simon Johnson, and others, listened to his offers of places under the government, and Mr. Clarke promised his influence upon the Council in their favour, after it had been concerted that the Board should resolutely refuse their consent. The intrigues of the chief demagogues were not known abroad till they *themselves* discovered the snare, and they instantly fell from the heights of popularity into the most abject contempt. This was the condition of

the popular party, not only mistrusted but hated, when Mr. Clarke met them in the autumn of 1738.

Conscious of his superiority, he reminded them, after proposing an address of condolence on the death of Queen Caroline, that the Crown was without support by the late project, not warranted by usage nor consonant to gratitude, and insisted upon as large and long a revenue as formerly. He then asserted, that they had seventeen thousand pounds of bills in circulation, without funds to sink them and preserve their credit—proposed the continuation of the excise for that purpose, but not unless they gave the King's government a permanent support. He added the unwelcome information, that their tonnage duty act of 1734 was in danger of a disallowance on representation of the agents of other colonies—urged the appointing one for this province—insisted on finishing the fortifications, and recommended unanimity, as a duty to their King and country.

The elder Morris foresaw the storm, and having provided for himself when last in England, he announced his appointment to the government of New-Jersey, and declining his services here, a writ was ordered to supply that vacancy.

No address being ordered, nor any steps taken, except for promoting popular bills, from the 5th to the 21st September, Mr. Clarke prorogued them to the 5th October, and again on the 11th October to the next day. On the 13th he called them before him, and insisted upon what he had already mentioned—alarmed them with the intention of the French, to make settlements near the Wood Creek, not far above Albany—advised the erection of a fort there, and planting in that country the Scotch emigrants just arrived, and for whose relief he asked their aid; added, what he had before hinted in a letter to the Speaker, that the Senecas were treating with Mr. Beauharnois,\* then the Governor of Cana-

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\* A man of sense and genteel manners, reputed to be a natural son of Louis the Fourteenth.

da, about the land of Irondequot, and recommended an immediate prior purchase.\*

They soon after formed the design of tacking clauses for the continuation of their paper money to the yearly support bill. Mr. Clarke, through their Speaker, intimated his objections to that proceeding; on which they unanimously resolved not to pass the support bill without assurances that the paper money of 1714 and 1717, and the excise to cancel the bills, should be continued for some years. To this he replied, that he would not assent without a permanent revenue. They then resolved on tacking the clauses; and the next day he dissolved them, after sharp reprehensions for their inattention to the objects he had recommended, and to facilitate the changes he had in view he suspended the new writ of summons to the 14th July, 1739.

The choice of Mr. Adolph Philipse for the chair in the next Assembly, held in March, is a proof that the electors were unfavourable to the anti-Cosbyan chiefs; some of the warm men of the last House were returned, and a dread of the multitude fell upon both parties. The collective body, animated and enlightened during the late troubles by the patriotic publications which were universally read, became jealous of the common interests, suspicious of all officers, and, by reason of former apostacies, more particularly vigilant respecting the conduct of such as themselves had raised into power.

Mr. Clarke's speech, therefore, though importunate for the re-establishment of the old practices of supplies for a number of years, was cautious and soothing; and after urging the erection and repair of forts, the purchase of Irondequot, presents for the Indians, and aid to the Scotch emigrants from Isla, who had

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\* The history of the disappointments of Captain Laughlin Campbell and his Scotch associates, was anticipated in the first volume, published in 1756, which gave offence to Mr. Colden, the Surveyor General, who was uneasy under the representation made in justice to those unfortunate adventurers.

wintered here, he recommended a new law to regulate juries, instead of an old expired one passed in 1699.

The address gave him only general assurances of a mature consideration of these points; lamented the loss of the triennial act, repealed by the King; and hinted that they would offer him one for septennial Assemblies.

The small-pox raged at that time in the capital, and the country members, though the House sat at Greenwich, were very desirous of a recess. To procure this they consented to a provision for a few months, and bore the affront of messages from the Council by their Clerk; but when they met again in August, they protested against the repetition of it, and from this period they have been invariably brought by one of the members of the Council.

It was not till this late day that the House was furnished with a set of the statutes, and the votes of the Commons of England, which, with the acts of the other Colonies, had been ordered by the Assembly, whose journals, though more regular than formerly, still discover many proofs of their ignorance of the usages of Parliament.\*

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\* What a contrast in every thing respecting the cultivation of science between this and the Colonies first settled by the English. Near one hundred and thirty years had now elapsed since the discovery of New-York, and seventy-three from its subjection to the Crown of England. When the Legislature borrowed acts of Parliament from private libraries, they were seldom inspected, nor, perhaps, much admired. South Carolina had attempted, by an act of Assembly of the last century, to extend a variety of the old statutes, and renewed it again in 1712. It is entitled, "An act to put in force in this province the several statutes of the kingdom of England, or South Britain, therein particularly mentioned." The preamble is in these words:—"Whereas many of the statute laws of the kingdom of England, or South Britain, by reason of the different way of agriculture and the different productions of the earth of this province from that of England, are altogether, and many others, which otherwise are very apt and good, either by reason of their limitation to particular places, or because in themselves they are only executive by such nominal officers as are not in nor suitable to the constitution of this government, are hereby become impracticable here." The 1st section enumerates and extends the general and principal acts of the statute book to the 4th and 5th of Queen Anne. The 2d, extends such as they refer to. The 3d, all such as relate to the allegiance and the rights and liberties of the subject. The 4th, that the

Mr. Clarke renewed his former attempts at the next convention of the Assembly, and to promote ship-building (an art since carried to great perfection) advised the giving bounties with apprentices; and at the same time gave them notice of Governor Belcher's request, for the nominating commissioners to join with others, to be appointed by the Assembly of Massachusetts Bay, in ascertaining the line of partition between the two provinces, which was repeated during the session by a letter from that Governor of the 17th September, with a threat of carrying it out for themselves, if these instances were slighted;—words which they fulfilled some years afterwards, to the great detriment of private property in this colony, and the waste of public money, and not without the effusion of blood.

The Assembly's neglect to vote an address, their immediate attention to a militia bill, the call for accounts of expenditures and estimates of the new fortifications, were all unfavourable omens of the Lieutenant Governor's disappointment. He discovered,

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authority they give to Parliament shall, in Carolina, be construed to be in the Assembly; that to the Lord Chancellor, to the Governor and Council; that their Chief Justice shall exercise the powers of the Judges of the Common Pleas, King's Bench, Exchequer, Justices of the Sessions, Commissioners of Oyer and Terminer; and other officers, those of similar officers in England. The 5th, that so much of the common law as is not altered by the statutes, so enumerated by the act taking wards and liveries, the old tenures in capite and knights' service, purveyance, or that part of the common law relating to matters ecclesiastical, not repugnant to the settlement of the Church of England in Carolina, be declared to be in as full force as in England. The 6th, subjects their officers to the like penalties. The 7th, respects their fees. The 8th, courts and prisons. The 9th, confirms the mode of conveyancing, by lease and release, prior to the extending of the statute of uses. 10th, extends all the English statutes concerning customs, trade, and navigation. The 11th, declares all other statutes, not transmitted since 8th of Anne, to be unaffected by this act. The 12th, that this act shall not affect the statute of 13th of Charles II.—cap. 6th, declaring the sole right of the militia to be in the King. The 13th, nothing in any of the above statutes, abridging the liberty of conscience or any ecclesiastical liberty, were considered as extended by that act, nor to alter their course of proceeding and balloting jurors under a former act of Assembly of 7th January 1694–5, or any other act of the province. It is not improbable that the British Legislature (3d George II.) took the hint of balloting jurors from that Carolina act, as they had for pleading a discount from one enacted here several years before the statute of 2d George II. cap. 22.

also, by their votes an extreme parsimony in the laws intended for the forts; that but only one hundred pounds was allowed for the Irondequot purchase; that the project for settling the Highlanders at Wood Creek was disrelished, though pressed upon them by a pathetic petition from these poor strangers, for they had but five voices against postponing the consideration of their affecting circumstances. He saw another, for reducing his own salary; and that attempts were made to lessen the petty allowances received by the Judges; and, at last, they concurred in a resolution to support the credit of the paper emissions of 1714 and 1717, if their bill for continuing them with the excise did not pass into a law; upon which he prorogued them for six days, and sharply reprehended their inattention to the great object of his wishes. After proposing the example of the British Commons for their imitation, he adds, "they have ever been jealous of the rights and liberties of the people, yet have always been zealous and forward to support the government that protects them. They give a gross sum for the support of government. They don't touch upon the application or disposition of it, that being the legal and known prerogative of the Crown; and the deficiencies are made good in the like manner."

Having observed that he had passed the militia bill before he prorogued them, they no sooner made a House again, on the 9th November, than they protested against the omission of the Council, who had neglected to notify their concurrence in that act, as inconsistent with the ancient practice of the good correspondence of the Legislature; but thought fit to send up with their favourite bill to continue the paper money and the excise duty, another, for the erection and repair of the forts, and a third providing for a revenue. But this last was only for one year, and nothing was as yet done towards the application of the money to be raised by it. To win upon their generosity, the sagacious politician, as soon as the Council had passed the two first bills, convened both Houses, and gave them his assent, saying, when he

signed them according to our unparliamentary practice,\* “I do this as the highest instance I can give of my care for the credit and welfare of the colony, and of the confidence I have in your honor.” The Council conspired with him, and immediately sent Mr. Horsmanden to acquaint them of their concurrence in the revenue bill; and soon after the House voted a salary to the Lieutenant Governor of thirteen hundred pounds; and by the application bill, not only paid off the arrears, but secured the officers for the ensuing year. To Mr. Horsmanden, who had been constituted the third Judge in 1737, they allowed seventy-five pounds for his past services, and, in future, a salary of fifty pounds. The session ended on the 17th November.

The inattention of this day to the emigrants from Scotland, was unpardonable. They were objects of compassion, and the measure of establishing them upon the northern frontier, as they desired to be, was recommended by every motive of sound policy. There was no excuse for neglecting so fair an opportunity, not only of forming a barrier against the new encroachments of the French at Crown Point, but of encouraging other useful adventurers to follow their fortunes, to a colony weakened by the removal of many in the late troubles. Colonel Morris, who was an active member of the Assembly at that day, but not present at the rejection of a motion made by Mr. Livingston for a gift of seven pounds to every one of the seventy Scotch families imported by Capt. Campbell, informed the author, that it was owing to a discovery that the Lieutenant Governor and Mr. Colden, the Surveyor General, insisted upon their fees and

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\* There is a clause in King William's charter to the Massachusetts Bay, “That no laws, ordinances, elections, or acts of government whatsoever, shall be of any validity without the consent of the King's Governor, signified in writing.” And it is probable the usage commenced here, in consequence of an instruction. The Clerk prepares his note at the foot of every bill—“I assent to this bill enacting the law, and order it to be enrolled.” This he reads with the title, and the Governor subscribes his name in the presence of the Council and Assembly.

a certain share of the lands; and that he could make no other apology for the public neglect of those unfortunate adventurers than an abhorrence of being duped by the self-interested motives of the public officers. Had that object been patronized by the Legislature, we might have seen vast forests, between the waters of Hudson's River and the two northern Lakes on the west and the River Connecticut on the east, cultivated by a hardy and useful multitude, to the great augmentation of the commerce of the colony, and then have saved it from tempting the avarice of a neighbouring Governor, whose ill founded claims, representations, and intrusions, have given rise to controversies and law-suits, injurious to private property, and destructive of the public tranquillity.\*

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\* Mr. Colden, to vindicate Mr. Clarke and to exculpate himself, though not named in the former representation of Campbell's disappointment, gave himself the trouble of two letters, to the author, of the 15th January and 17th February 1759. He alleges, that the project failed through the poverty and discord of the Scotch emigrants; that Campbell's followers refused to settle under him; that himself alone was unable to improve the quantity he asked for; and that the Assembly even disinclined to contribute to their relief; and that, from the incapacity of the company to comply with the conditions of the King's instructions, he thinks the Executive without blame. The author's object being general, he declined entering into any partial controversy respecting the criminality of individuals. Let it suffice, that the account given was consistent with information procured from Mr. Alexander, whose intimacy with Mr. Colden gives it force; and that Colonel Livingston, whose compassion excited him to make the motion, told the author, on the 16th December 1777, that it was with design to raise the patent fees, the want of which obstructed the grant, and that he omitted to express it in his motion, as the disinclination of the House to gratify their avarice would have most certainly defeated his design, and that he lost it by a suspicion that the contribution was to be so applied, though asked as under the cover of enabling them to settle the lands at Wood Creek. The Lieutenant Governor's speech had confirmed their jealousy; there was this clause in it—"The peopling of that part of the country to the northward of Saratoga will be of great advantage to the province, as well in strengthening the frontier as enlarging your trade. Several families arrived here last fall from North Britain, who are willing to settle there, and more expected from thence this year; but as they are poor, they will want some help to enable them to subsist their families until, by their labour, they can raise provisions to subsist themselves, and I am persuaded that you will give them some needful subsistence." Captain Campbell himself also presented a petition to excite the charity of the Assembly. Do these proofs accord with Mr. Colden's suggestion, that Campbell and his colonists were so far at variance as to refuse to settle under him.

The Spanish war commencing soon afterwards, there was a short session in the summer of 1740, in which the Assembly contributed money to accelerate the levies of several hundred men, under Colonel Blakeney, for an expedition against the island of Cuba, and many of Campbell's followers, who were starving, through his inability and the public parsimony, enlisted for that service, and perished in the expedition afterwards directed against Carthagená.

There was a hotter meeting in September, when Mr. Clarke pressed them to provide for further levies, towards the defence of Oswego; a law to prevent desertion from the sea and land forces; the repair of the chapel of the Mohawks, among whom Mr. Barclay had officiated with a small salary from the colony with some prospects of success; and the revenue act being expired, he renewed his request for the ancient support.

The Assembly would not add to their late gift of two thousand five hundred pounds towards the expedition; thought the British statutes gave sufficient relief against desertions; that the Indian fort, in the Mohawks' country, was sufficient for assembling all the Christian converts of that tribe, and that, if they increased, a church ought to be built by private contributions. They then called upon the Council for a committee to aid them in forming a fee bill, and sent up another to limit the continuance of Assemblies.

The Governor took no public notice of these transactions; but when they had made provision for the war, according to the modern example, prorogued them.

The attempt to regulate the fees of officers failed by the neglect of the committee of the Assembly to meet on the subject, but the septennial bill, passed by the lower house, was lost by the nonconcurrence of the Council.

The Lieutenant Governor could not avoid being displeased with the dependence created by the new mode of a yearly revenue, raised by one act, and the

settlement and payment of salaries and debts by another; especially as, at the last session, a division had been called on the question, whether instead of thirteen hundred pounds he should not be stinted to seven hundred and eighty pounds; and for allowing nothing to the two puisne Judges: and therefore, when he met them again on the 15th of April 1741, he addressed them in a long speech, in which he applauds their felicity, excites them to gratitude, and charges them with the wanton abuse of prosperity in demanding a Treasurer of their own, and then insisting that the revenue should pass into his instead of the Receiver General's hands, who had a salary out of the royal quit-rents, observes, that to rid themselves of the check of the Auditor General, an officer established in the reign of Charles 2nd, the Assembly, after the expiration of the revenue in 1709, (which had been before given without any application,) had refused to support the government, unless they had the appointment of the salaries, nor would provide for the Auditor General, who, from soon after the revolution, had a constant allowance. "Thus (to use his own words) fixing on themselves the dependence of the officers for whom they provided (for men are naturally servants to those who pay them,) they, in effect, subverted the constitution, assuming to themselves one undoubted and essential branch of his Majesty's prerogative." He then imputes their not returning to a just sense of their duty to the late disorders, and recommends their re-adopting the parliamentary example—"to remember, as to this province, a jealousy, which (says he) for some years has obtained in England, that the plantations are not without thoughts of throwing off their dependence on the Crown of England. I hope and believe no man in this province has any such intention. But neither my hopes or belief will have the weight of your actions; and as you have it in your power, so it is your duty and true interest, to do it effectually, by giving to his Majesty such a revenue and in such a manner as will enable his Majesty to pay his own of-

ficers and servants—whereby they will be reclaimed to their proper dependence—and such as the flourishing condition of the province will amply admit; which, from the great increase of trade and people, is well known to be vastly better than it was above forty years ago, and for many years before and after such a revenue as I speak of was given by the then Assemblies; at the same time that large sums of money were raised to pay detachments of the militia, which were sent to the frontiers for their defence in time of war.”

After hinting his apprehensions of a war with France, he advises the erection of batteries for the ordnance and stores lately supplied by the crown; the support of Oswego, and presents to secure the Indian alliance; and adds—“I have done my duty and discharged my conscience, in giving you this warning: do yours, and save your country from ruin. At present, if any part of the province should be invaded, and money absolutely necessary for any service be required, even in such an exigency I cannot, either with or without the advice of the Council, draw for a penny, a circumstance well worth your consideration.”

He then proposed a more efficacious militia act; the appointment of an agent in England; the erection of new buildings in the room of those lately burnt in the Fort; and a night watch, upon the suspicion of a conspiracy among the slaves.

A diversion of men's minds from their usual objects of attention to the negro plot, the Governor's losses in the late conflagration, and the fresh instance of the bounty of the crown, seemed to favor Mr. Clarke's exertions at this juncture, for converting the Assembly to their ancient confidence in the Executive.

It was at his instance the cannon and stores were increased: there had been no warlike supplies to the colony since the year 1708. Those now sent, were valued at six thousand seven hundred and seventy-three pounds, fifteen shillings and eight-pence sterling. Their iron ordnance consisted of ninety-six

guns, fifteen of which were 32-pounders, twenty-four 18-pounders, and twenty 12-pounders; the rest were of various inferior sizes.

The Assembly could not avoid an argumentative address, for they were determined not to cede the advantages they had gained in the late patriotic struggles.

They confess their gratitude to the crown for many favors, but balance the account by their ample and cheerful supports to it; admit the confidence of their ancestors in the officers of government, but assert, that it was forfeited by misapplications of the revenue, and that Queen Anne, on that account, consented to their having a Treasurer of their own. They appeal to his own knowledge, that the squandering of the public money gave rise to the two long bills for discharging the debts of the colony, and that the excise on strong liquors was a fund applied to, and which still stood mortgaged for, that purpose.

They observe, that formerly the crown rents, and the casual revenue by forfeitures, contributed to the support of government, though this was now discontinued. They boast of contributing beyond their neighbours; that they provide fuel and lights for the troops posted here, and presents to the Indians; allege that they have erected a large battery in the capitol, and others elsewhere, and victualled five hundred volunteers for an expedition to the West Indies.

They deny that wantonness of prosperity or the late division had any influence upon the modern scheme of annual supplies, or that any of the officers of the crown or public creditors have suffered by the change.

They avail themselves of his consent, and that of other Governors, to bills making particular applications of public money, and intimate that the Lords of Trade think the practice reasonable.

To the insinuation of a suspicion of a thirst in America to independency, they "vouch that not a single person in the colony has any such thoughts or desire:

for (as they add) under what government can we be better protected, or our liberties and properties so well secured?"

They then declare their disinclination to pass any bill for supporting the government, till the present one is nearly expired, nor then, unless according to the late model. They promise an attention to what he recommended respecting the forts, Oswego, and the militia; agree that an agent may be useful, if he is made totally dependent upon the Assembly. After lamenting the conflagration of the Fort buildings, they give oblique insinuations that no provision will be made for the future residence of Governors within the walls of the Fort; and after confessing the King's favor in the late gift, they ungraciously reflect upon the omission of powder, and indulge a degree of ridicule on the utility of such an ample supply of ordnance without it.

Mr. Clarke did not forget to mention in his answer, that Queen Anne's consent to their appointment of a Treasurer, respected not the ordinary revenue, but sums raised for extraordinary uses;\* and he promised that justice should be done for any misapplication of the public money they could point out; adding, that though Mr. Horatio Walpole, the Auditor General, had a salary, yet fees were due to him for auditing the accounts of the revenue, which in other provinces were usually paid out of the money accounted for, as they had formerly been here; and that he saw no

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\* There is a clause in the correspondence with the agent, which may give some information to the reader. The letter from the speaker, of the 11th November, 1751, was in these words: "I have examined into the affair of our Treasurer's appointment, and find it to be thus:—In the infancy of this colony, all public monies were made payable to his Majesty's Receiver General, but were so greatly mismanaged and misapplied in the years 1702 and 1705, during the government of Lord Cornbury, afterwards Earl of Clarendon, that the Assembly attempted to put the money raised by them, into the hands of a person named by them in the act by which the money was raised. The then Governor would not assent to that bill, until he had acquainted her Majesty, the late Queen Anne, with the matter. Her Majesty was thereupon graciously pleased to direct the said Governor (as he himself acquainted the Assembly, in his speech of the 27th September, 1706,) to permit the General Assembly to appoint their own Treasurer,

reason why it should not be so in future. Only two acts passed at this meeting, which continued to the 13th June; one, putting the fortifications in a respectable condition, and another for a military watch.

The winter which ushered in this year, (ever since called the hard winter,) was distinguished by the sharpest frost, and the greatest quantity of snow, within the memory of the oldest inhabitant. The weather was intensely severe from the middle of November to the latter end of March. The snow, by repeated falls, was at length six feet above the surface of the earth; and the Hudson river passable upon the ice, as low as the capital, within thirty miles from the open sea: cattle of all sorts perished by the want of fodder; and the deer of the forests were either starved or taken, being unable to browse or escape through the depth of the snow. The poor, both in town and country, were distressed for food and fuel; and by the scarcity of these articles, the prices of almost every thing else was raised, and though since reduced, yet never so low as in the preceding year. When the frost relaxed, there was a continuation of the flight of wild pigeons from the southward, in greater flocks than was ever before known; and what was still more singular, in the month of March, five or six weeks earlier than in more temperate seasons. These birds nestle in the northerly woods of the continent, and retire towards autumn to the southerly provinces. Their flesh is admired here, and being

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*for extraordinary uses, and which were no part of her Majesty's standing revenue.* And by her Majesty's standing revenue, it seems was then understood the quit-rents reserved on lands granted by the crown, forfeitures, seizures, &c., which were then all applied towards supporting the government in this colony; for ever since that time, all monies raised by the Assembly have been put into the hands of their own Treasurer, and the quit-rents, &c. been paid to his Majesty's Receiver General, and have since been taken from their former application, and appropriated by the crown to other uses. The first Treasurer I find was appointed by act in the year 1706: the second, who is now Treasurer, was appointed only by a vote of the House, and approved of by Mr. Burnet, then Governor of this colony; and I do not find that the Assembly's right to appoint such an officer, has been disputed by any Governor of this colony since the first allowance thereof by the late Queen Anne."—(Vide *History of New-York*, p. 139.)

taken in nets in such plenty, greatly contribute to the relief of the poor. While nestling, the males and females resort alternately to the salt meadows for food, and by turns brood over the eggs. The two sexes at this season are never taken together, though the flocks are innumerable, and sometimes miles in length. It is often asserted, and generally believed, that undigested rice has been found in their crops; and because the pigeon is a bird of very swift wing, it is conjectured that they bring this food from the Carolinas; and yet there certainly in the spring is no standing ripe rice in the fields.

The conflagration of the chapel and buildings in the Fort, on Wednesday the 18th of March, was at first imputed to accident, or the carelessness of an artificer employed in soldering one of the gutters of the main edifice, the residence of our Governors. The roof, which was of shingles, had taken fire without observation, and the wind blew fresh from the south-east. The usual alertness of the inhabitants was checked by their dread of the explosion of the magazine, and the flames soon communicated to the chapel; the barracks, and the Secretary's office erected over the Fort gate, were utterly consumed.

Mr. Van Horne, a militia officer, who indulged a blind credulity that the fire was premeditated by the negroes, and who, for beating to arms, and putting up a night watch, was nicknamed *Major Drum*, propagated his own fears to others, and in a few days afterwards the consternation was universal. A second fire broke out on the 25th, a third on the 1st of April, and two on the 4th. Coals disposed for burning a haystack, were discovered on the 5th, and the day after, two other houses took fire; and while the magistrates were convened for enquiring into suspicious words dropped by certain slaves, another house was in flames, and before that was extinguished, a blaze appeared from another building, and a negro was discovered flying over fences from the spot.

No man now doubted of the reality of a plot, but for what end was only conjecture. That a few slaves

would hope to effect a massacre of their masters, or thus vindicate their liberties, was the height of absurdity: but the fears of the multitude led them to presume nothing else; and perhaps that extravagance then gave birth to the proofs by which it was afterwards supposed to be incontestably confirmed.

When Mr. Clarke spoke to his Assembly, on the 15th of April, he ascribed the destruction at the Fort to accident, in mending a gutter, and the rest of the fires to design. But no discovery was made, till the Grand Jury of the Supreme Court found a clue by the examination of a girl of the name of Mary Burton, who was a bought servant to John Hughson, a shoemaker, and keeper of a low tavern in the west quarter of the town.

There had been a burglary committed in the house of Robert Hogg, on the 28th of February. The goods stolen were brought to Hughson's, and, as the girl said, by Wilson, a lad belonging to the Flamborough ship of war, and three negroes. They were received by another maid-servant of the house, who, with two of the negroes, were committed upon the accusation of Mary Burton. The inquest pressed hard upon the witness concerning the transactions at that house, it being known that it was often frequented by negroes, who were served there with liquor. She confessed, after much importunity, that certain slaves caballed there in private, and had formed a conspiracy to set the town on fire; but denied that any white person was present at either of the consultations for that purpose, except herself, Hughson, his wife, and the other maid. From this testimony, which varied upon further examinations, the jails were crowded with the accused, amounting to twenty-one whites, and above one hundred and sixty slaves.

The whole summer was spent in the prosecutions; every new trial led to further accusations: a coincidence of slight circumstances, was magnified by the general terror into violent presumptions; tales collected without doors, mingling with the proofs given at the bar, poisoned the minds of the jurors; and the

sanguinary spirit of the day suffered no check till Mary, the capital informer, bewildered by frequent examinations and suggestions, lost her first impressions, and began to touch characters, which malice itself did not dare to suspect. But before this, thirteen blacks were burnt at the stake, eighteen hanged, and seventy transported upon conditional pardons. Hughson, his wife, and the maid, with one Ury, died at the gallows, and Hughson and a negro were gibbeted.

Ury was capitally accused, not only as a conspirator, but for officiating as a Popish priest, upon an old law of the colony, passed at the instance of the Earl of Bellamont, to drive the French missionaries out of the territories of our Indian allies; and he was convicted on both indictments. A letter from General Oglethorpe, the visionary Lycurgus of Georgia, to Mr. Clarke, of 16th of May, gave weight to the suspicions against this wretch. After the discovery that some Spanish Catholic slaves, taken in certain late prizes, were accomplices in the plot, the letter contained the following passage:—"Some intelligence I had of a villanous design of a very extraordinary nature, and it was very important; viz. that the Spaniards had employed emissaries to burn all the magazines and considerable towns in the English North America, thereby to prevent the subsisting of the great expedition and fleet in the West Indies; and that for this purpose many priests were employed, who pretended to be physicians, dancing masters, and other such kinds of occupations, and under that pretence to get admittance and confidence in families." Mr. Smith assisted, at the request of the government, on the trial against Ury, who asserted his innocence to the last; and when the ferments of that hour had subsided, and an opinion prevailed that the conspiracy extended no further than to create alarms, for committing thefts with more ease, the fate of this man was lamented by some and regretted by many, and the proceedings against him generally condemned as harsh, if not cruel and unjust. There was no

resisting the torrent of jealousy, when every man thought himself in danger from a foe in his own house. The infection seized the whole Legislature, who were convened when these tragedies were acting in the court and the fields. The Grand Jurors presented a petition for severer laws against these unfortunate Africans; and they had the thanks of the House for their zeal and vigor in the detection of a conspiracy to burn the town and murder the inhabitants, encouraged by their opportunities for assembling at taverns, and at the common reservoir of tea-water in the suburbs, and their indulgences on Sundays for sport and recreation.

The old laws were thought not sufficiently severe; and yet this enslaved part of our species were under regulations demonstrative of the dangerous spirit of petty Legislatures, even under all the sunshine of the benevolent and merciful doctrine of Christianity.

Their children were made slaves, if such was the condition of the mother by a law in 1706, which contained no provision in their favor, even when they were the offspring of a lawful marriage; so that it remained a question whether the father's slavery did not subject the legitimate issue of a free woman to servitude. They were witnesses in no case against a free man; and by the act of 1730, they were incapable of any contract, or the purchase of the minutest article necessary or convenient to the comfort of life. The power of the master in correcting them was punishable in all cases, not extending to life or limb. They were exposed to forty lashes by the decree of a single magistrate, as often as three of them were found together, or any one walking with a club out of his master's ground without leave; and two Justices might inflict any punishment short of death and amputation for a blow, or the smallest assault upon any Christian or Jew. Nay, their masters are punishable for pardoning or compounding for their faults, and all others for harboring or entertaining them, who, when suspected, are made subject to an oath of purgation. Every manumission of a slave is invalid.

without security in two hundred pounds to indemnify the parish. They are subjected to the summary trial of but three Justices and five freeholders, without a challenge, even on accusations touching life; and in the case of a negro, every homicide, conspiracy, or attempt to kill a freeman, unless in the execution of justice, or by misadvantage; a rape, or an attempt to commit one; the wilful burning of a dwelling-house, barn, stable, out-house, stacks of corn or hay, nay, or may hem, if wilful, exposes to the punishment of death.

Ought not humanity to revolt at these sanguinary institutions? I should be chargeable with partiality if I did not add, that, like other immoderate laws either neglected or working their own remedy, they are seldom executed; negroes, when capitally impeached, being often tried in the ordinary course of justice, and admitted to the rights and privileges of free subjects under like accusations.

Mr. Clarke brought his Assembly together again, and spoke to them, on the 17th September. General Wentworth having called for fresh recruits to the army in the West Indies, the Lieutenant Governor asked their aid for victualling them, and the reparation of the ruins in the fort. He renewed his demand for a generous and durable revenue, as what the King expected, and the expected Governor would insist upon, and what he thought it their interest, as well as duty, to grant; concluding with the remark, that as this would be his *last* speech, these instances could flow from no selfish motives, which weak minds might ascribe to them.

The members firmly attached to the new and popular mode, soon after presented him with a long, harsh, ill-penned address, expressing great exultation on the prospect of Mr. Clinton's arrival, and their hope that he would bring with him the expected military stores, with presents for the Indians. They intimate, that the quit-rent fund ought to contribute to the erection of a new house for the Governor; testify their disinclination to give money for the levies till

they are actually raised; refer him to their former address for an answer to his last speech, on the subject of the revenue; adding now, as a reply to what dropped from him in words after it was delivered, that the revenue, properly considered, was a term only applicable to the quit-rents and other dues to the crown, and that these then did, and always had, passed to the hands of the Receiver General, and that since they had ceased to be applied to the support of government, the Assembly had not demanded any accounts of their amount. Then, to prove an assertion in their former address, they observed, that though a thousand pounds were given at the beginning of the last French war, for building batteries at the Narrows, not a single stone was ever laid out towards that work; whereas the late erection of forts showed the propriety of giving the trust to commissioners of their own appointing. They remind him that, under the old form, the public creditors were sometimes obliged to sell their warrants at a discount, through the delay of payment, of which there had been no instance under the modern regulations. Towards the close, they assert their right to apply what they raise, and obliquely hint that he is of the same opinion, but indirectly influenced by the Auditor General: and to the Governor's general remark, that other colonies paid fees to Mr. Walpole, they oppose his own letter to Mr. Belcher, the late Governor of Massachusetts, asserting that he had received nothing from New England and thence, because Massachusetts is a considerable colony, they conclude (and certainly *secundum artem*) that he has not received any allowances from the other of our neighboring colonies.

Mr. Clarke indulged his resentment in an unusual manner, for when the speaker had read the address, he gave them no other answer than a bow, on which they retired, not without some disappointment; and he afterwards communicated several matters, by an irregular method he had before practised, in a letter to their speaker, instead of a message to the House.

After the two obnoxious bills for continuing and applying the revenue for a year, were brought in, Mr. David Jones carried a resolve by fourteen votes against eleven, for postponing them till others more beneficial for the inhabitants in general were passed into laws. Mr. Clarke, upon sight of their entry, prorogued them for two days. When they met, they instantly introduced the lost bills; but soon after, voted one thousand five hundred and sixty pounds to the expected Governor, for a year from the day his commission should be published here; continued all the old allowances; voting at the same time fifty pounds to the Lieutenant Governor, to reimburse him for house-rent.

As soon as the support bill, with several others, had reached the Council and obtained their concurrence, Mr. Clarke sent for the House, and gave them the efficacy of laws.

When the application bill was ordered to be engrossed, Mr. Jones renewed his late motion, but the House was not disposed to countenance his boldness; and the Lieutenant Governor, on the 27th November, passed it, with several others, and the House was adjourned till the month of March.

One of the most important acts of this session, was that for introducing the English practice of balloting for jurors. Mr. Clarke had formerly recommended it, and for that reason it was not forwarded till now. It had been passed by the Council, but Mr. Jones brought the draft, that it might originate in the Lower House; and when it was committed, proposed to oblige the Quakers of Queens county, which he then represented, to serve as jurymen; but he could prevail upon none but his colleague Mr. Cornet, and another member, to join in his motion.\*

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\* The honor of penning this useful law, which in the main is a compound of two modern statutes, was claimed both by Mr. Delancey and Mr. Horsmanden; and as the text, by an incautious composition, gave ground for the innovation of balloting jurors in criminal causes not capital, I have insisted upon that construction, and discovered all that anxiety in the former for resisting and refuting a doctrine not so favorable as the old law to the

This gentleman came into public service with the patriots of the new Assembly, in 1737, and the favorable opinion of his constituents, by his firm adherence to the project of an annual support. He was therefore returned again in 1739, and then became acquainted with Mr. Clarkson, who was chosen one of the city members; and these two, with Colonel Morris the younger, who was a little in the shade for his compliances to Mr. Clarke, were the leading members of the House.

The Lieutenant Governor trusting to his own abilities, and by the first dissolution had piqued the pride of Chief Justice Delancey, who, discerning the advantages of popularity, not only for the better securing his salary, for which he now became dependent upon the Assembly, but to be revenged upon the Lieutenant Governor, and gain an influence upon his successors, and with a view perhaps to the succession itself, studied to recommend himself to the House, and now, by the intervention of Mr. Clarkson, began an intimacy with Mr. Jones, of which he made a good use, and it continued to the end of his life.

In the two late sessions, therefore, Mr. Clarke had little or no assistance from his Council, where Delancey kept the majority cool, himself privately abetting the opposition of the Lower House.

prerogative, as in my opinion would add credit to his pretensions. But Mr. Horsmanden's claims never extended higher than to a copartnership in the work. This note would be of no consequence, if trivial actions were not sometimes as characteristic as the greatest exploits. Subjoined is the report of the case. *October Term, 1756. Samuel Stilwell ads. Dom. On information upon an act of Assembly to prohibit the exportation of provisions to the French. A common venire had issued, and a pannel with forty-eight names was returned. Insisted by Nicol and Smith for the defendants, that the jury ought to be balloted by the act of Assembly, the first clause by implication binding the crown, and the eighth having an immediate reference to the first. Kempe, Attorney General, contra, that the practice has been otherwise. Curia. The statute 4 & 5 William and Mary, of which the first section of our jury act is a copy, binds the King; (Hale's H. P. C. 2d vol. 273 note;) but the 8th section from George II. relates to suits between parties in civil causes. Defendants' counsel then object, that the pannel ought then to contain but twenty-four names. Curia. It is bad; but one juror being sworn, the objection is too late. The cause was tried, and the verdict pro rege.*

In consequence of this conversion and new alliance, the House was now led to serve Mr. Horsmanden, (who often held the pen for Delancey,) by a bill to give him two hundred and fifty pounds for a digest of the laws of the colony: and before the adjournment, both Houses concurred in a joint address to the King, imploring his royal aid towards repairing the colony loss by the late fire; a measure from which they expected to derive no other advantage than, by declarations of their poverty, to obviate any bad consequences from Mr. Clarke's representation, either of the asperity of their addresses, or their disregard to the great ends he had assiduously laboured to accomplish, for the advancement of the authority and influence of the crown.\*

When the proposal for compiling the laws was taken into consideration, the House had discovered what they seem to have been ignorant of, when they presented Mr. Clarke with the long address of 24th April, 1741, for in that they applaud the revolution, as restoring to the colony the benefit of Assemblies; but, as they now perceived, in setting a rule to Mr. Horsmanden for executing his work, that they had Assemblies before that happy æra, and that there were some unfavorable acts of those days still in force, they not only authorise him to begin in 1691, but hastily give leave to Mr. Justice Philipse, who had also enlisted with the Chief Justice on the popular side, to bring in a bill, declaring all acts and ordinances passed before that period null and void. It was then already prepared; but whether, from the advanced state of the session, or the improbability of its success in so well-informed an administration, or the prudence of not stirring the old embers, and the hope that the new edition would help to conceal what they wished to annul, this bill was never taken up after

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\* It was concealed in the copy of the entries of the day transmitted to Mr. Clarke, under the pretext of decency to the King, and transmitted, not by him to the Secretary of State, but in a private letter to Mr. Clinton, the new Governor.

the first reading. Of the digesting act, Mr. Horsmanden took no advantage, hoping greater gain by compiling the proceedings against the late conspirators, under the title of the *History of the Negro Plot*: he left the digest to be executed by other hands, which was done in 1751.

Mr. Clarke's glory being in the wane, and the Assembly looking out for the rising of a new sun, they took the unprecedented liberty, at their next meeting, on the 16th of March, 1742, to request a further adjournment. He gratified them till the 20th April; and two days afterwards, insisted upon their repair of the town and fort; payment for the transportation of ordnance to the interior frontier; the rearing new buildings for the Governor's residence; the victualing and transporting recruits to General Wentworth; the support of agents in the Indian country; and the amendment of the militia law.

They gave him no answer, but in a few days appropriated a small sum for repairing fortifications, and forwarding the volunteers to the West Indies; and when the act for this purpose was passed, with another regulating the payment of quit-rents and land partitions, they adjourned, and did not meet again upon business till the 13th of October, when he renewed his request for a permanent revenue, a new act for the support of Oswego, and the conveyance of twenty more recruits to the West Indian army.

Except an act for securing Oswego, little was done but to provide the ordinary supplies and salaries for the year; and they separated before the expiration of that month.

He repeated his requests on the 21st April, 1743, and urged their supplying the magazines with ammunition, ball, and other necessary stores; with which they were piqued, as Mr. Clinton, at their private instance, had asked for them in England, and did not succeed.

## CHAPTER II.

*From Governor Clarke's return to England, to the appointment of Governor Clinton.*

WITH a sullen disregard of the speech, they hastened to a close of the session; and after the passing three bills, neither of extensive or permanent utility, they took their leave of each other, and never met again, except for further adjournments, till Mr. Clinton arrived.

Though Mr. Clarke had several children, they made no connexions in the colony. After previous dispositions, he returned in 1745 to England, to possess a handsome estate in Cheshire, purchased with his American acquisitions. He was taken prisoner on the passage, but found means on his arrival, to procure a parliamentary donation superior to his losses both by the fire and his captivity. By his offices of Secretary, Clerk of the Council, Counsellor, and Lieutenant Governor, he had every advantage of inserting his own, or the name of some other person in trust for him, in the numerous grants, which he was in a condition, for near half a century, to quicken or retard; and his estate, when he left us, by the rise of his lands and the population of the colony, was estimated at one hundred thousand pounds.

His lady, who was a Hyde, a woman of fine accomplishments, and a distant relation of that branch of the family so highly distinguished by the famous Lord Chancellor Clarendon, died at New-York; but Mr. Clarke survived her to about the year 1761, having lived in the affluence he acquired in America, and leaving the world at a very advanced age.

Mr. Clinton was the son of the late Earl of Lincoln, and uncle to the then Earl, who had not long before united himself to the Newcastle family, by his marriage with Mr. Pelham's daughter. The Governor had spent his life in the navy; and preferring ease

and good cheer to the restless activity of ambition, there wanted nothing to engage the interest of his powerful patrons in his favor, than to humor a simple-hearted man, who had no ill-nature, nor sought any thing more than a genteel frugality and common civility, while he was mending his fortunes, till his friends could recall him, and with justice to their own characters and interests, to some indolent and more lucrative station.

He arrived, with Mrs. Clinton, a lady of a character very different from his own, and several young children, on Thursday the 22d September, 1743.

His commission was published the same day, and people of all ranks, in his progress to the Town Hall for that purpose, testified a vociferous joy. He soon learnt that the Assembly were under an adjournment to meet in a few days, and that the multitude would be pleased with an opportunity for a new choice of Assemblymen. The first act of his administration was a dissolution of the House, on the 27th of September, and writs were the same day made out for convening another.

While the chiefs of the country were feasting with and recommending themselves to the new Governor, the elections were conducted without tumult, and with the change of not more than seven members. Mr. Clarke had displeased the principal zealots of the two parties, which took their rise in Cosby's administration; Van Dam was superannuated; Alexander and Smith engrossed by their private concerns, and immersed in the labors of their profession. Delancey falling in with the spirit they had raised, as most favorable to his resentment against Mr. Clarke, and being in some favor with the leaders of the last Assembly, had his eye turned to the Governor; and thus the multitude were left to that torpor which generally prevails when they are uninfluenced by the arts and intrigues of the restless and designing sons of ambition.

The session opened on the 8th of November, and continued only to the 17th of December. They gave

the Governor a salary of fifteen hundred and sixty pounds, one hundred pounds for his house-rent, four hundred pounds for fuel and candle-light to himself and the garrison of the independent companies, one hundred and fifty pounds to enable him to visit the Indians, eight hundred pounds to make presents to those tribes, and one thousand more for the unsuccessful solicitations of the King's aid, at their instance, towards rebuilding the Fort, and obtaining a supply of ammunition. They continued the salary of three hundred pounds to the Chief Justice ; and now, without opposition, voted one hundred pounds a year to Mr. Justice Philipse, half that sum to Mr. Horsmanden, the third Judge ; and, on motion of Mr. Morris, began the practice of enabling the Governor and Council to draw upon their Treasurer for contingent services, now limited to sixty pounds, but afterwards increased to one hundred pounds per annum. The Governor, in return, assented to all the bills that were offered him, without any objection to those limiting the support to a year ; another for septennial Assemblies ; and a third, which, by giving a remedy for the recovery of legacies at common law, according to the project of the anti-Cosbyan patriots, gratified the general disgust raised in the late heats against the authority of the Court of Chancery ; the business of which was, by this act, considered as somewhat abridged.

In this session, the House adjudged that personal residence was not requisite to qualify a member, and therefore admitted Mr. Ludlow to a seat for the county of Orange, though his dwelling was at New-York. And it is also worthy of remark, that they applauded the practice of dissolving the Assembly upon appointment of a Governor in Chief, informing Mr. Clinton in their address, that the first instance to the contrary gave rise to discontents, and that the last had furnished a great handle to the late divisions.

On the prospect of a rebellion in Scotland, the Lords Justices despatched orders for military preparations, which occasioned a call of the Assembly in

April 1744, and the Governor's renewal of his importunity for a supply of the magazine, rebuilding the Fort, appointing agents, attending to Oswego, strengthening the hands of the commissioners for Indian affairs, and for guarding those allies against the intrigues of the French.

Both Houses strove to outvie each other in this alarm; and a joint address was immediately presented, to testify their abhorrence of the Scottish rebellion and a Popish Pretender; large sums were given for the fortifications; three thousand pounds voted towards a mansion-house for the Governor; and the arrears due to Mr. Barclay, the Mohawk missionary, paid off. After which the House adjourned to July; when the war having been declared, and the Indians visited by the Governor, he called upon them for further expenditures on the northern frontier, not only for adding to the works, but to co-operate with commissioners from Massachusetts Bay, in cultivating a more firm and extensive alliance with the savages of the wilderness. He recommended also the fitting out armed vessels to guard the coast, and made his third request to them for constituting agents at the British Court. He backed his speech with a message, more particularly to explain his general requisitions; and very properly proposed the construction of a fort, at the joint expense of this and the eastern colonies, in the neighborhood of Crown Point, and another at Irondequot, or near it, at a common charge, to secure the fidelity of the Senecas, the strongest and most wavering of all the six confederated tribes. He was still more importunate on these subjects, after the flight of the Indian traders from Oswego upon the news of a declaration of war; and added his demands for the support of certain prisoners brought in by the privateers.

The House, perceiving the insufficiency of their duties upon commerce to raise a competent fund for the public exigencies, and that it was expedient to lessen that income and encourage privateering, by exempting prize goods from all impost, proceeded

with some hesitation, being disinclined to that general taxation to which they would be obliged to submit, and foreseeing their own animosities in the assessing of the county quotas for a partition of the burden.

At this juncture the Council, to quicken their motions, requested, by Doctor Colden and Mr. Murray, a free conference, to which they assented. Mr. Delancey opened it, and urged the necessity of strengthening the garrison of Oswego, lately deserted by the traders; and they were brought to join in an address, imploring the Governor to send a detachment of fifty men to that fortress, for whom the Lower House immediately voted a supply; and agreeing to give a sum for the support of the prisoners in the colony, they addressed the Governor, complimenting him on his vigilance and clemency, and entreated that he would find means to send them away.

When they had provided the ordinary yearly support, and for many other expenses, and were desirous of a recess, Mr. Clinton, observing that no provision was made for the general Indian alliance proposed by the Massachusetts Bay Assembly, entreated their attention to it as a great and important object, much urged by Governor Shirley in a late letter: but their generosity being exhausted, or their fears excited, they resolved it to be imprudent to engage in the scheme, without a previous plan of it; and they were sent home on the 21st of September.

The French attempt upon Annapolis having roused the eastern colonies to the bold design, which they accomplished in the year 1745, by the reduction of Louisburgh; Mr. Clinton, animated by Mr. Shirley's example, sent them ten pieces of field ordnance, with the necessary warlike implements, and in March solicited the Assembly to co-operate in that enterprise. He took the same opportunity to press the equipment of a guard-ship for the defence of the coast; the appointment of agents; the construction of more inland forts; further presents to the Indians; money to defray the march and transportation of the

detachments and supplies to Oswego; liberal sums for contingent expenses; further aid for supporting prisoners; provision to enable him to send commissioners to join with others in a general treaty with the Indian nations; and a union with the rest of the colonies, both of force and councils, agreeably to a royal instruction continued from the revolution to this day.\*

\* The instructions referred to, show the early attention of the crown to this great object. The following are copied from the book given to Mr. Montgomery:—

“83. Whereas it has been thought requisite that the general security of our plantations upon the continent of America be provided for, by a contribution in proportion to the respective abilities of each plantation; and whereas the northern frontiers of the province of New-York, being most exposed to an enemy, do require an extraordinary charge, for the erecting and maintaining of forts necessary for the defence thereof; and whereas orders were given by King William the Third, for the advancing of five hundred pounds sterling towards a fort in the Onondago country, and of two thousand pounds sterling towards the rebuilding the forts at Albany and Schenectady; and likewise by letters, under his royal sign manual, directed to the Governors of divers of the plantations, to recommend to the Councils and general Assemblies of the said plantations, that they respectively furnish a proportionable sum towards the fortifications on the northern frontiers of our said province of New-York—viz.

Rhode-Island and Providence Plantation,	- - -	L. 150
Connecticut,	- - - - -	450
Pennsylvania,	- - - - -	350
Maryland,	- - - - -	650
Virginia,	- - - - -	900

Making together, - L. 2,500

And whereas we have thought fit to direct, that you also signify to our province of Nova Cæsarea, or New-Jersey, that the sums which we have at present thought fit to be contributed by them, if not already done, in proportion to what has been directed to be supplied by our other plantations as aforesaid, are two hundred and fifty pounds sterling for the division of East New-Jersey, and two hundred and fifty pounds sterling for the division of West New-Jersey: you are therefore to inform yourself what has been done therein, and what remains further to be done, and to send an account thereof to us, and to our Commissioners for Trade and Plantations, as aforesaid.

“84. And you are also, in our name, instantly to recommend to our Council and the general Assembly of our said province of New-York, that they exert the utmost of their power in providing, without delay, what further shall be requisite for repairing, erecting, and maintaining of such forts in all parts of the province, as you and they shall agree upon.

“85. And you are likewise to signify to our said Council and the said general Assembly, for their further encouragement, that besides the contributions to be made towards the raising and maintaining of forts and fortifications on that frontier, as above mentioned, it is our will and pleasure, that

The Assembly, conscious of their neglect of his recommendation for constituting an agent, took the repetition unkindly. They had, on that account, been much censured without doors, a bill having been brought into Parliament for preventing the colony paper money from being a legal tender, and to prevent which no steps had been taken, though it was known here before their last rising. But the other colonies awakened the popular attention, and compelled the city members and several merchants to join with the Council, in the recess of the House, to co-operate in the necessary remonstrances to the Commons of Great Britain for postponing the bill.

They had not then, as they now asserted, given any more than the title of it, and consequently knew nothing of the scope of its last two clauses, which alarmed all the colonies with apprehensions of a design to overturn the liberties of the plantations, by compelling our legislators to obey *all the orders and instructions of the crown*.

One of the first objects, therefore, of their present attention, was a report upon these transactions; thanks to the managers of them; the reimbursement of the money sent to Messrs. Samuel and William

in case the said frontier be at any time invaded by an enemy, the neighboring colonies and plantations upon that continent shall make good in men, or money in lieu thereof, their quota of assistance, according to the following re-partitions—viz.

Massachusetts Bay,	-	-	-	350 Men.
New-Hampshire,	-	-	-	40
Rhode-Island,	-	-	-	43
Connecticut,	-	-	-	120
New-York,	-	-	-	200
East New-Jersey,	-	-	-	60
West New-Jersey,	-	-	-	60
Pennsylvania,	-	-	-	80
Maryland,	-	-	-	160
Virginia,	-	-	-	240

Making together, - 1,358

Pursuant whereto, you are, as occasion requires, to call for the same; and in case of any invasion upon the neighboring plantations, you are, upon application of the respective Governors thereof, to be aiding and assisting to them in the best manner you can, and as the condition and safety of your government will permit."

Baker of London, who had been charged with the opposition to the bill offered to the Commons, and the approbation of the objections urged against its passing into a law.

In this ill humour they presented no address; and, though Mr. Clinton sent them the papers necessary for their information concerning the eastern expedition, with a copy of the instruction referred to in his speech on the 14th of March, they continued for several days inattentive to it; slighted his opinions concerning additional fortifications; ordered the city members to enquire for and consult some engineer; intimated a design to lessen the garrison of Oswego; declined the project of a guard-ship; rejected that for appointing joint commissioners to treat with the Indians for mutual defence; voted but three thousand pounds to the New England expedition; resolved to appoint no agents at present, and declined the provision of presents for the Indians.

Expecting nothing from them in this temper, he convened both Houses before him on the 13th May, passed three bills sent up to him by the Council, and dissolved the Assembly, delivering a speech at the same time, in which he not only expresses his own resentment with insinuation of the receipt of personal incivilities, but endeavours to render them odious to their constituents.

The late sudden dissolution had very little influence upon the minds of the community at large, for nearly the same members were returned; but it influenced the new House, for, in answer to the Governor's speech of the 25th June, they presented an address promising attention and despatch, and testifying their persuasion, that he had the King's service and the welfare of the colony sincerely at heart, and promising their assistance in cultivating harmony between the several branches of the Legislature, for the great ends they all had in view.

What he had proposed was the erection of several batteries in the capital, more forts on the frontiers, and aid of ships, men and provisions to the New Eng-

land enterprise upon Louisburgh, which promised success by the capture of one of the batteries and a ship of 64 guns.

Mr. Jones, who had long acquired the reputation of an economist, was now placed in the chair.

They immediately ordered in a bill to give five thousand pounds towards the Cape Breton expedition, another for the necessary fortifications, and others for finishing the Governor's house, presents for the Indians who were wavering and had lately made a visit to Canada. His design for an immediate treaty with them was his apology for convening the Assembly.

They voted six hundred pounds in addition to four hundred pounds not yet expended, and he went immediately to the Indian treaty at Albany. After his return in autumn he informed the House, by a message of 2d November, that the French Indians had broken the neutrality and made incursions upon New England; that he dreaded an attack upon this colony; that the Six Nations agreed to take a part in the war, and had his orders for action. They did not part before the Governor's prediction was verified in the destruction of the scattered village of Saratoga, within forty miles from Albany.

The party of French and Indians, from Crown Point, surprised those settlements on the night of the 16th November, and burnt the fort and several other buildings, killed some of the inhabitants and carried others into captivity. The country being uncovered down to the very city of Albany, this event not only spread a general consternation among the northern settlers, who all fled from their habitations, but raised a general dissatisfaction. Mr. Clinton, indeed, was unblameable, having frequently endeavoured to excite the Assemblies, and so had Mr. Clarke, to erect a fortress on the northern frontier; but the censures of the multitude being loud and clamorous, the Governor indulged more heat than prudence, and sent a message to the House respecting the tragedy at Saratoga, and threatened to draw out detachments of

the militia, expressing himself in such sharp reproaches for their inattention to his former requisitions, as were not soon forgot. At present they suppressed their resentment, and entered a resolve, that they would, at all times, concur in every reasonable measure, not only for the defence of the province, but the assistance of their neighbours, in any well concerted plan consistent with her circumstances, to distress and attack the enemy; adding, that this was and ever had been the firm purpose and unanimous resolution of the House.

The session being nearly at an end, they passed votes of credit, offering rewards for scalps, the payment of scouting parties, the erection of redoubts, the transportation of detachments, provisions, and ammunition for the Indians. The rejection of Mr. Holland, who claimed a seat in the House as member for the township of Schenectady, contributed not a little to the acrimony of the Governor's message. Though he had a majority of electors, his petition was, at first, unreasonably postponed, and himself, at last, excluded (1st November) under the pretext of his wanting qualifications required by the town charter; but, in truth, because he was a resident at New-York and a friend to the Governor. Mr. Holland lost nothing by this injury, for it procured him the mayoralty of the metropolis and a place in the Council.

The bills providing salaries for the year, in which they continued the gift of twenty pounds made for several years past to Mr. Barclay, the missionary to the Mohawks, being passed with several other acts, the session terminated on the 29th of November.

Importuned by Colonel Philip Schuyler of Albany, whose brother was massacred in the late descent upon Saratoga, for a detachment of three hundred of the militia of the lower counties, and the rebuilding of the fort there, and by the Commissioners for Indian affairs on other proposals for the security of the frontiers, and stimulated by letters from Doctor Colden and others, who gave alarms of attacks intended

on the western side of Ulster county, as well as by the people of Massachusetts, for a confederacy with the eastern colonies in a plan of general defence; Mr. Clinton gave the Assembly a recess only till the 20th of December, and then held up these objects to the attention of the House in a message, asking at the same time for some efficacious amendments to the militia act, and tartly taxing them with the neglect of the important particulars laid before them for the service and honor of the province.

They asked leave to adjourn to the 7th of January, 1746, and before he consented, voted one hundred and fifty pounds for rebuilding Oswego. They concurred, at the next meeting, in amending the militia act; prepared to fulfil their late engagements; called for a conference with the Council respecting the New England confederacy; voted the erection of a line of block-houses on the frontier, and for rangers to defend the western quarter of Ulster and Orange; added to the fortifications in the capital; resolved on a lottery, and a new emission of ten thousand pounds in paper money, to be sunk by a tax.\*

They nevertheless made their advancements with disgust, and fell into quarrels with each other, dividing often upon the partition of the general burden among their counties, and at length for several days met only to adjourn. The Governor passed the bills that were ready for him, and prorogued the House for a few days. On re-assembling, the 4th of March, the small-pox prevailing at Greenwich, where they had lately sat, they requested an adjournment to the second Tuesday in April, at some other place. Nothing could be more reasonable than a change of the place, whatever the objections might be as to the time. The answer was this: "Gentlemen,—My present indisposition prevents me from speaking to you in public. I most earnestly recommend to you to

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\* They would not confer with the Council upon the bill for this emission, considering it as a money bill. *Vide Journal, 25th February, 1746.*

make ample provision, and that with the utmost despatch, for all those services I recommended to you the last session, and hitherto remain unprovided for." Upon which they resolved, that their speaker and five members have power to adjourn from day to day, but that not less than a majority transact any other business, and upon all questions the names of the members be entered and published in the journals; and then they adjourned to the evening of the next day.

Mr. Clinton called his Council together in the interim, and sent a message consenting to their meeting on the 12th instant, at the borough of Westchester. They met there, and first voted a request to meet at Brooklyn on Long-Island, but rescinded it the same day, and desired to return to New-York; and remaining inactive for several days, the Governor, with the advice of the Council, preferred Brooklyn to the capital, where the small-pox prevailed, and ordered them to adjourn thither accordingly.

Sixteen days had now elapsed to no other purpose than incurring the ridicule of the wits, and sharpening spirits before sufficiently disquieted; and as soon as the House met at Brooklyn, on the 20th of March, they appointed a committee to answer a representation, which the Council had presented to the Governor, on the late refusal of the House to confer with them on the bill to emit ten thousand pounds of paper money.

The Governor now opened their business by a message, demanding provision for constructing six new block-houses on the northern frontier; the punctual payment of their militia garrisons, and twenty-five men to be posted in two others at Schenectady; notified them that the Six Nations had refused to act in the war; urged an alliance with the New England colonies, to lessen the expense of repurchasing the aid of the six cantons; insisted upon more money to strengthen the hands of the commissioners, *pro re nata*; demanded a further aid of provisions for the Oswego garrison; a quota of men to garrison Louisburgh, till others arrived from England; and, to in-

gratiate himself with the people without doors, concluded with declaring, that "the enemy cannot be more industrious for the ruin of the colony, than he could be careful to preserve it in the quiet possession of his Majesty's subjects."

After this, they called a conference with the Council for nominating commissioners to treat with the other colonies, and agreed to recommend to the Governor, Messrs. Philip Livingston, Horsmanden, and Murray, of the Upper House, and Mr. Verplanck and Mr. Nicoll, of the Lower House. They desired the Governor to inform them whether he had any objection to the emission of paper money; but to this he gave the proper answer, that "when the bill came to him, he would declare his opinion."

They proceeded then to votes for the services that were recommended, and increased the emission bill to thirteen thousand pounds, and projected a lottery.

To lessen the expense, they proposed to the Council a joint address to the Governor, for his posting at Schenectady sixty men of the independent companies in the pay of the crown: and about the same time, Mr. Clinton stimulated them again for their quota to maintain the garrison at Louisburgh, where an attack was expected; and for an allowance to Captain Armstrong, an engineer, sent over at his instance by the crown, to plan the intended fortifications. The first of these they immediately refused, assigning for their excuse, the exposed and weak state of the colony.

On the 3d of May, he gave them a recess for a month; and then passing the lottery bill, to raise three thousand three hundred and seventy-five pounds, for fortifying the city of New-York; another for the like purposes in other parts of the colony; a third for a military watch in the county of Albany; another authorizing commissioners to take affidavits in the country to be used in the Supreme Court; and that for issuing thirteen thousand pounds in bills of credit, to be sunk by a three year's tax; the annual

levies of which, here subjoined, show the comparative opulence of the counties at that time:

New-York,	-	-	-	L. 1,444	8	11
Albany,	-	-	-	- 622	3	9½
Kings,	-	-	-	- 254	18	0½
Queens,	-	-	-	- 487	9	5½
Suffolk,	-	-	-	- 433	6	8
Richmond,	-	-	-	- 131	6	3½
Westchester,	-	-	-	- 240	14	8½
Ulster,	-	-	-	- 393	18	9½
Orange,	-	-	-	- 144	8	10½
Dutchess,	-	-	-	- 180	11	1½

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L. 4,331 10 8

To guard the reader unacquainted with the petty cabals of a distant colony, and who may be deluded by the seeming precision of these quotas, it is proper to add, that the members for the metropolis always complain of the intrigues of the country gentlemen, in loading their city with a third part of the public burdens for the ease of their own counties; and that but for the fear of losing their bills in the Council, which is generally composed of citizens of influence, a still greater share would fall upon that small island forming the city and county of New-York.

In the recess, Mr. Clinton found it necessary to add three hundred of the militia to the one hundred and twenty in the block-houses, and those thirty posted at Saratoga. This occasioned fresh demands upon the Assembly, to which they readily complied, with an augmentation of one hundred and fifty more, besides fifty Indians: and three days after the first message, the Governor informed them of the designation of this aid by another brought to Brooklyn, by Mr. Banyar, Deputy Clerk of the Council; and the same day opened a new and extensive scene in a speech, acquainting them that the Duke of Newcastle, in a letter of the 9th of April, had signified his Majesty's pleasure to set forward an expedition against Canada, commanding levies in all the colonies for that purpose; that every company should consist of one hun-

practised upon the Mohawks in his neighbourhood. The day the Governor arrived, he was presented with two French scalps, taken near Crown Point; and on the 8th August Mr. Johnson, to whom Mr. Clinton had given the rank of Colonel, entered the town at the head of the Mohawks, painted and dressed in their manner. The Governor being indisposed at the opening of the conference, it was left to Mr. Colden to deliver a speech of his own drafting; and in his excuse for the absence of Mr. Clinton, he describes himself to the Indians as the *next person in the administration*, for Lieutenant Governor Clarke having gone to England, he was then the eldest member of the Council. He reminded them of the antiquity of the covenant chain, and that one intent of the present interview was to confirm it. He informed them of the French attack upon Annapolis Royal, of the reduction of Louisburgh in resentment for that injury, of the subsequent incursions of the enemy, and of their promises of assistance; rebuked their inactivity; revealed the design to attack Canada, on this side by troops from this and the western colonies, while those to the eastward, with the navy, ascended the St. Lawrence. For exciting the savages to co-operate with us, and raise and spread their fame among all the Indian nations, he calls to their remembrance the ancient insults their fathers had received from the French at Onondaga, Cadaracqui, and in the Seneca country. He applauds the prowess of their ancestors in the invasion of Montreal, inveighs against their listening to the seducing wiles of the French priests, and then requests their joining with us in the grand enterprise of driving all the French out of the country as essential to their and our safety.

These addresses were, after the Indian manner, divided into short paragraphs, and belts of wampums given for memorials. A Sachem, on the delivery of every belt, turning to each tribe uttered the word, "yo-hay," *do you hear*. They answered, and when the war-belt was given, there was a general shout.

Mr. Clinton appeared the next day, and an Onondaga orator replied for all the nations.

They promised to hold fast the ancient silver chain; engaged from the bottom of their hearts to make use of the hatchet against the French and their children, (meaning their Indian allies); threw down a war-belt as a testimony of their union, and recommended unanimity among all the colonies. They denied that the French priests lulled them asleep, declared their abhorrence of them, and that the remembrance of the cruelties of the French made their blood boil. They gave assurance, that they would send in their warriors, with some from the Missisagacs, a nation of five castles and eight hundred men between the Lakes Erie and Huron, who were represented by their delegates then present.

The presents from the Crown, Virginia, and Massachusetts Bay, were afterwards distributed.

The Governor left it to the Six Nations to give a share to the Missisagacs; intimated his discovery, that certain of their warriors, being in Canada when the tidings of the reduction of Louisburgh arrived, had joined the French for the defence of Quebec. He promised arms, clothing, and ammunition, to such as would now go out in the British service.

After they had delivered the presents, they hung on the war-kettle, painted themselves as in their wars, and danced till late at night. They performed this singly, in a slow motion, to a plaintive tune.

One of the Missisagacs's deputies died at Albany of the small-pox; and, towards the last stage of his disease, requested the Governor, that the first French scalp taken in the war might be sent to his mother, and this promised, he, without reluctance, resigned himself to death.

Mr. Clinton, about the same time, convened and spoke to the Mohendars, under which name are comprehended all the other savages near this part of the sea coast, and on the banks of the rivers Hudson, Connecticut, Delaware, and the Susquehana; to these also, a set of dastardly tribes, he gave pre-

sents for promises which they never meant to perform.

There were, soon after this congress, such insinuations of the scantiness of the Governor's gifts, whether true or false cannot be determined, that he thought it requisite, in vindication of his character, to publish an account of the treaty and transactions. It was written by Mr. Colden; but, though it evinces the propriety of the speeches to draw the Indians into the war, it contained no list of the articles actually distributed among the savages, and wanting this proof, the scandal was rather confirmed than refuted by that incautious publication.

Meeting his Assembly again in October, the Governor, now guided by Mr. Colden, set the public wheels in motion in an unusual manner. Being indisposed, he sent for the Speaker, and, through him, laid a copy of his speech before the House. They pronounced this mode irregular and unprecedented; but to prevent delay, went into the consideration of the business recommended.

The speech complains of the difficulty he had to engage the savages to go out into this war; ascribes the ill temper of the Indians to neglect or misconduct in the management of their affairs, and the inefficacy of the design, to Mr. Gooch's declining the service, the non-arrival of the fleet, and the news of the Brest squadron's hovering on the coast of Nova Scotia with many land forces. Having given orders for a winter camp in the north, and the erection of more small forts, the Governor demanded further supplies for those purposes, as well as the management of Indian affairs. He reprobates all parsimony as real prodigality at this juncture. His persuasions to harmony excited to discord. He hinted that distrusts were often aggravated by artful designing men; and insisted that every branch of the Legislature should act within its own limits, according to the model of the British constitution, adding, at the close, "that when unhappy differences have arisen in our mother country, from an imprudent or wanton stretch o

power in any one of the parts of government, a cure has been attempted by throwing an over-measure of that power into some other part, by which the balance between the several parts of government has been destroyed. The cure became worse than the disease, whereby confusion and calamity always ensued, till the balance was again restored. I am told that something of the like nature has more than once happened in this government. Let us, then, guard against such mischiefs; and let us resolve to show, by our actions as well as by our words, that we understand and love the English constitution, and thereby convince each other of the sincerity of our intentions for the good of our country; and then, I make no doubt, all of us shall enjoy the pleasures which necessarily arise from the good effects of such a resolution."

The Assembly voted six thousand five hundred pounds for victualling the troops in their winter quarters, and two hundred more to transport the provisions to Albany, but would not provide, in future, for the militia detachments of May and June.

The Governor, to whom the address was presented, took the hint, that they did not mean to pay for the land-carriage *from* Albany; and, therefore, insisted that this expense should be provided for. The volunteers amounted to thirteen hundred and eighty men. He said there were one hundred and eighty men without their bounty money, and requested blankets both for them and part of the King's independent companies, who were to join the little army on the northern frontier.

The flame soon broke out. The Assembly turned their attention to the civil list; for the year voted only the deficient bounty money, and ordered a representation to be drawn up in answer to the Governor's speech and message, and a bill to be brought in to raise two thousand two hundred and fifty pounds by lottery, towards erecting a College.\*

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\* 23d October 1746.

On Wednesday, the 24th of October, they adjourned, without leave, to Friday, then to Monday, and the day after received, approved, engrossed, and sent to the Governor a representation reported by Colonel Philipse, Colonel Morris, Colonel Schuyler, Mr. David Clarkson, and Mr. Henry Cruger.

It is to be observed, that while this instrument was preparing, advice arrived from Albany, that Henry Holland, the Sheriff of that county, by order of Col. Roberts,\* had broke into the Commissioners' store-houses, and taken out the provisions entrusted to their care for the use of the army.

The representation of the Assembly, after declaring their ignorance of the bad disposition of the Indians and the authors of it, sullenly observed, that they last year provided for his voyage to a treaty with them, and that he and those he employed can best tell what service it had answered.

They professed their willingness to inquire into the neglect or misconduct of the Indian affairs, and for that end, they asked for the correspondence upon this subject between him and others since his arrival.

They disapproved of his winter camp, intimating their apprehensions that deaths and desertions, through the severity of the weather, would frustrate the King's design of any expedition to Canada the next year.

They boasted of further contributions to it than the King expected, and then alleged that they are at a loss to discover the meaning of his dissuading from parsimony, a term not so much as once mentioned in their House.

They are surprised at his opinion, that the Legislature are not in perfect harmony. They are apprised

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\* An officer of one of the independent companies, now raised by Mr. Clinton to the rank of Colonel in the intended expedition. He had been a Cornet of horse at the accession of George the first, and was connected, by his first marriage, to the Earl of Halifax. His second wife was a daughter of that Mr. Harison who had so deep a share in the feuds of Cosby and Van Dam.

of the necessity of it; think themselves capable of guarding against the private views of artful and designing men, and would be sorry any such should prevail on him to disturb the harmony necessary to the general preservation; that if any persuasion excited his distrust of the Legislature at this juncture, they affirm that they are not friends to the country, but men of sinister views.

They confessed that differences have formerly happened, but they were thought to arise rather from bad advice to Governors than wantonness in the people, and ought to serve as land-marks to avoid the like evils. They affirm, that upon the communication of the Duke of Newcastle's letter they provided for victualling the troops, and gave eight pounds bounty with a blanket to each volunteer, and never intended their Commissioners should deliver out the subsistence at Albany; that the circumstances of the colony (of which they were the most competent judges) would not admit of any further step, and beyond this they meant not to go.

The Governor who, when Mr. Gooch declined his appointment, acted in his stead in the direction of the troops intended for Canada, had, before he left Albany, ordered the Commissioners to deliver out provisions to the four independent companies, destined with others to the carrying place above Saratoga on the route to the French fort at Crown Point. Colonel Roberts had the command to require an unlimited quantity of provisions for the whole party, and to surmount the refusal of the Commissioners, gave an order on Mr. Holland to impress provisions for fourteen hundred men for two months. It has been before observed, that a law was passed authorizing the impress of artificers; it extended to horses, waggons, and other things necessary for the success of the expedition, and Mr. Clinton had left a warrant with Holland, the sheriff, for carrying it into execution. Provisions had been demanded for one hundred and thirty men more than were in service.

and three companies had already drawn out their quota.

The House considered the Governor, therefore, as in the scheme of forcing the transportation, the expense of which they had refused to defray, and the rather because Doctor Colden, when at Albany, had insisted upon it, menacing the Commissioners if they did not comply.

Hence the clamors in the country, the prognostications in the Governor's message, and the severities of the representation, though it was four days afterwards that the House resolved, that the Governor was ill advised in granting the warrant for the subsistence of the King's independent fusileers; that the Commissioners obeyed the law in refusing to comply with it; that Colonel Robert's order was arbitrary and illegal; that the breaking open the stores was a violation of the rights and liberties of the subject; and that Colden, Roberts, and Holland, were guilty of high crimes and misdemeanors; and that it would be in vain to furnish provisions for subsisting the forces in the expedition against Canada, until assurances were given that an effectual stop should be put to such proceedings; and an order was made for requesting the Governor's command to the Attorney General to prosecute the delinquents.

Mr. Clinton's message of the 10th of November, in answer to the representation of the fifth, contributed nothing to the extinguishment of these discontents. Displeased with the Commissioners of Indian affairs, he charges the untowardness of the savages upon them, as traders with them; promises to give orders to the Secretary for that business to prepare copies of the correspondence; expresses high disapprobation at the public testimony of their dissatisfaction with his winter camp, as countenancing a contempt of orders, and the printing it without waiting for his answer; and threatens to complain to the King of the difficulties he had passed through in the last six months; and with respect to the resolves of the 8th he observes. in another message of the 24th,

for the vindication of his own measures and to wipe off aspersions upon others, that the troops at Albany, by concert between himself, Mr. Shirley, and Mr. Warren, were destined against Canada; that he added to them a part of the independent companies; that the new levies, who they had agreed to supply with provisions, were at first sixteen hundred men, exclusive of commission officers; that these, by desertions and disease, were reduced to fourteen hundred, including the officers; that he could not imagine it disagreeable to them that he supplied the defect of two hundred out of the independent companies; that when he issued the orders to march, he sent Major Clarke to the Commissioners with assurances that, if the Assembly disapproved of the supplies, he would replace the quantum; that the form of the warrants they complained of are settled in Council; that he authorized Doctor Colden's request to the Commissioners for transporting and delivering out the provisions to the Captains, and on their objecting, to engage payment for the expense of the carriage, and that if they refused this, to intimate his intention to appoint other Commissioners; that Mr. Colden reported their consent, and Mr. Cuyler, one of them, confirmed it.

He then refers them to the minutes of a council of war, held at Albany by Colonel Roberts, Colonel Marshal, Major Clarke, and Major Rutherford, on the 16th October, at which Colonel Roberts presided, showing that, after Mr. Clinton left Albany, Mr. Cuyler refused to transport the provisions, assigning the want of money as his reason, or to appoint a Commissary to deliver them out, if they were transported by the army; nor would he deliver them at Albany to any Commissioner or Quarter-master, though Col. Roberts promised to be accountable and to produce the Captains' receipts, insisting, that the letter of the act required the Commissioners to deliver them only to the Captains.

That the council then considering, that the Captains could not find separate store-houses on the

frontiers, nor could their services in scouting parties enable them to preserve the provisions from waste, he advised Col. Roberts to impress their provisions, give a receipt for them, appoint a Commissary to be recommended by the Commissioners to issue them out; and that such conduct was, in their opinion, not inconsistent with the intent of the act of Assembly, and that, without it, the expedition for guarding the frontiers would be neglected.

The Governor added, that he thought himself in the line of his duty in ordering the march; the council right in their advice from the great law of necessity, and that neither Roberts or Holland were to blame; that he could not, therefore, give any orders for prosecuting them.

He promised to assist in the discovery of embezzlements, if any there had been, and for obtaining justice to be done to the colony, and that the provisions impressed should be accounted for. He urged them to change the Commissioners for others less inclined to embarrass the service, obliquely impeaches them for deficiencies of rum; and, after censuring their freedoms with persons in his and Doctor Colden's stations, remarks, that their resolves deserve their most serious consideration.

The House resolved this answer unsatisfactory; that whoever advised or endeavoured to create jealousies and encourage a breach of the laws were enemies to the constitution; that they would grant no more supplies while such notorious abuses were committed; but that upon proper assurances of redress, they would grant further aids for the subsistence of the troops.

The Governor alarmed, asked for the sustenance of the troops, agreeable to their engagements, promising that what had been experienced should not happen again, and that exact accounts of the consumption should be kept and laid before them; and to divert their attention from the last object, made new requisitions to pay for female scalps; smiths among the Senecas and Onondagas; arrearages for

provisions at Oswego, and the repairs of the fort at Albany. But, unwilling to prolong the session, they postponed these considerations, and were prorogued on the 6th of December, when thirteen acts received the Governor's assent. Care was taken to prevent desertions from the army, to raise the taxes, to maintain a military watch in Albany, to keep up the militia, provide winter subsistence for the troops, support the civil list for a year, and raise two thousand two hundred and fifty pounds by lottery for founding a College, a project early in the eye of the patrons of the public school, formerly trusted to the care of Mr. Malcolm, favored by the pupils of that institution now rising to manhood, and forced by a general spirit of emulation on discovering the sundry advantages our youth had acquired by an academical education in Great Britain and Ireland, but chiefly at the neighbouring Colleges of New England.

The author observed in the first records of the colony of New Haven (vulgarly called the Blue-laws\*), that this was an object of the very first ad-

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\* A note ought not to be suppressed respecting these records, to correct a voice of misplaced ridicule. Few there are who speak of the blue-laws (a title of the origin of which, the author was ignorant) who do not imagine they form a code of rules for future conduct, drawn up by an enthusiastic, precise set of religionists; and if the inventions of wits, humorists, and buffoons were to be credited, they must consist of many large volumes. The author had the curiosity to resort to them, when the Commissaries met at New Haven for adjusting a partition line between New-York and the Massachusetts in 1767, and a parchment-covered book of demy royal paper was handed him for the laws asked for, as the only volume in the office passing under this odd title. It contains the memorials of the first establishment of the colony, which consisted of persons who had wandered beyond the limits of the old charter of the Massachusetts Bay, and who, as yet unauthorized by the Crown to set up any civil government in due form of law, resolved to conduct themselves by the Bible. As a necessary consequence, the Judges they chose took up an authority similar to that which every religious man exercises over his own children and domestics. Hence their attention to the morals of the people in instances with which the civil magistrate can never intermeddle, under a regular well-policed constitution—because, to preserve liberty, they are cognizable only by parental authority. The Select Man, under the blue-laws, found it his duty to punish every contravention to the decorum enjoined by the broad commandments of Heaven. The good men and good wives of the new society were admonished and fined for liberties daily corrected, but never made criminal by the laws of large and well-poised communities; and so far is the com-

venturers in that country, long before their charter, uniting that and the Hartford colony, was obtained. The inhabitants of New Haven (to whose honor be it mentioned) raised a large sum to begin the institution within five or six years from the date of their Indian purchase of that town, then called *Quinipiack*. It was from this seminary that many of the western churches in New-York and New-Jersey were afterwards furnished with their English Clergymen. Mr. Smith who was a tutor and declined the Rector's chair of Yale College, vacant by the removal of Dr. Cutler, was the first lay character of it, belonging to the colony of New-York. Their numbers multiplied some years afterwards, and especially when, at his instance, Mr. Philip Livingston, the second proprietor of the manor of that name, encouraged that academy by sending several of his sons to it for their education.

To the disgrace of our first planters, who beyond comparison surpassed their eastern neighbours in opulence, Mr. Delancey, a graduate of the University of Cambridge, and Mr. Smith, were, for many years, the only academics in this province, except such as were in holy orders; and so late as the period we are now examining, the author did not recollect above thirteen more, the youngest of whom had his bachelor's degree at the age of seventeen, but two months before the passing of the above law, the first towards erecting a College in this colony, though at the distance of above one hundred and twenty years after

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mon idea of the blue-laws being a collection of rules from being true, that they are only records of convictions, consonant, in the judgment of the magistrates, to the word of God and dictates of reason. The prophet, priest, and king, of this infant colony, was that Davenport who was in such consideration as to be sent for to the Assembly of Divines at Westminster, in settling the religion of the English and Scotch nations. These remarks were, by the author, communicated to Mr. Hutchinison of Boston, then one of the Commissaries, and to other gentlemen of eminence in the colony and of the very town of New Haven, who heard them as novelties, nor would the former adopt them, till he had recourse, the next day, to the records themselves. The author speaks only of those at New Haven.

its discovery and the settlement of the capital by Dutch progenitors from Amsterdam.\*

The Assembly being convened again in the spring of the next year, Mr. Clinton, in his speech of the 25th of March, observed, that the late provision for the levies extended only to the 1st of May; that he had secured the Six Nations without any charge to the colony, and had hopes of drawing some of the remote savages into an alliance, and for this purpose he required supplies to be distributed in presents; that agreeable to a concert with Mr. Shirley, two forts were intended to be erected at the portage on the route to Crown Point, to favor the expedition to Canada, for which the King's orders were daily expected; that no money being sent from England, and the Council of this colony and the Commissioners from the Massachusetts having proposed to prosecute the expedition at the immediate expense of the colonies, in certain rates there stated, he importuned them for their concurrence and proportion; and by a message he also desired a provision for scouting parties, to be kept up while the army went forward on the main design.

Bent upon renewing the hostilities of the last ses-

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\* The persons alluded to, were—

Messrs. Peter Van Brugh Livingston,	Messrs. William Peartree Smith,
John Livingston,	Caleb Smith,
Philip Livingston,	Benjamin Woolsey,
William Livingston,	William Smith, Jun.
William Nicoll,	John McEvers,
Benjamin Nicoll,	John Van Horne.
Hendrick Hansen,	

These being then in the morning of life, there was no academic but Mr. Delancey on the bench, or in either of the three branches of the Legislature: and Mr. Smith was the only one at the bar. Commerce engrossed the attention of the principal families, and their sons were usually sent from the writing school to the counting-house, and thence to the West India islands—a practice introduced by the persecuted refugees from France, who brought money, arts, and manners, and figured as the chief men in it, —almost the only merchants in it from the commencement of this century until the distinction between them and others was lost by death and the inter-communion of their posterity by marriage with the children of the first Dutch stock and the new emigrants from Great Britain and Ireland. The French Church of New-York contained, before their divisions in 1724, nearly all the French merchants of the capital.

sion, they did not vote any address, and resolving not to recede from the declaration that they would not transport the provisions from Albany, they agreed to victual their levies for three months, and pay for one hundred scouts, and only to pay one hundred and fifty pounds for the expenses of his journey to the intended Indian convention.

The enemy were, at that time, ravaging the frontiers and practising most merciless acts of cruelty. The House to make a handle of a pathetic petition presented to them, and for embarrassing and calumniating the Governor, asked one hundred men out of the little army destined to Canada for scouring the woods, offering every private a shilling per day beyond the pay of the Crown, and introducing it with a recital, that the levies were victualled at a very great expense, and had been hitherto unemployed; and to raise the popular outcry the higher, they besought him to pass the bill providing for the hundred rangers to which the Council had consented eight days before, intimating that they would then do nothing more, and desiring a recess.

The Governor thought himself compelled, for his vindication, to inform them, that when last at Albany he could not engage a man to range the woods under the wages of three shillings per day, with provisions besides; that their offer of one shilling was, therefore, no motive for their acting in that service, and if they agreed to it, the House had made no provision for their officers; that he had engaged the Six Nations at the sole expense of the Crown, who also bore all the other charges of the army except provisions; that parties of Indians and the new levies had been employed in divers excursions; that when the expedition to Canada was laid aside for the year, he ordered a camp to be fortified at the carrying place, that from thence they might intercept parties from Crown Point, and by collecting magazines there, forward the intended services of the present year against Canada; that this design was obstructed by the late obstacles respecting the issuing provisions, till the

frost compelled them to winter at Saratoga; that he had posted a part of the army in the Mohawks' country, others at and beyond Schenectady, three companies at Schaghticoke, four at Half Moon, two at Niskayuna, and others at Albany, leaving a force at Saratoga—"so that there were garrisons in a line from east to west, across the northern frontier, in every place where they could be placed in safety during the winter season;" that there were other places where forts ought to have been erected, but that he could not put that charge upon the Crown, they themselves not thinking them necessary for their own safety; that to keep the enemy at home, he had sent out parties of the Mohawks against their borders; that his project of a fort at the carrying place was approved of by Mr. Shirley, and some of the neighboring colonies were willing to contribute to it, if the Assembly of this colony would set the example, and when he urged their concurrence he had avoided all ground for fresh controversy.

He proceeds then to complain of their declining every necessary expense for the common security, and of their disrespectful behaviour which obliged him, as he says, "from that common justice which every man owes to himself, to speak out some things which otherwise I should have thought proper to conceal."

That the principal traders and richest men in Albany do not wish well to an expedition against Canada, from an attachment to a trade with that country, engrossed by a few, and which he had effectually obstructed.\*

To this he ascribes his difficulties with the Indians, and a message from the Governor of Canada persuading the savages to a neutrality, and promising

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\* The keenness of this insinuation will escape the reader's attention, unless he recollects the representation drawn up by Mr. Colden and others, in Governor Burnet's administration, against a petition promoted by Mr. Delancey's father, who derived great advantages by the Indian trade through Lake Champlain, and was, therefore, in opposition to the new trading house at Oswego.

from his pity of their brethren at Albany to turn his Indians on their most inveterate enemies of New England.

He then reminds them, that before the late negro plot information was given of Popish emissaries, and that he suspects them among us, working upon men of wrong heads, violent passions, and desperate fortunes, as had been the case in the late Scotch rebellion.

He shows the danger of false insinuations to raise jealousies among the people of their rulers and Governors; asks, with what truth it can be said the new levies have been hitherto unemployed, and suggestions publicly hinted of his neglect of duty? and promises an answer to their request for a recess, when he knows their resolution to take care of the colony.

They formed themselves into a committee of the whole House, and agreed upon another representation. To give them time to cool, he adjourned them from the 2d to the 19th of May, but with what success the reader will determine, after he reads the following abstract of the long answer of seven folio pages and a half in print, then reported by a committee consisting of Messrs. David Clarkson, Cornelius Van Horne, Paul Richard, Henry Cruger, Frederick Philipse, John Thomas, Lewis Morris, David Pierson, and William Nicoll. It was read, engrossed, and presented the same afternoon, with a request for leave to adjourn.

They disown any intention to offend by the request for employing the new levies for rangers, to which they were excited by information that they were willing to serve with an allowance beyond the King's pay of nine-pence or one shilling per day; by asserting that they were unemployed, was only meant that they were not then on the expedition to Canada, and that they might have been on short scouts without any injury to the service; that they were well apprised of the importance of the Indian alliance; that, therefore, they had put one thousand pounds in his hands in 1745 for presents, though he had then

money, before voted for that purpose ; that those Indians had, as yet, done nothing agreeable to their assurances of their engaging in the war if further depredations were made.

That they consider the King's order to make presents as an intimation that the charge ought not to fall on the colony ; that he went to Albany last summer at their expense, but what he gave the Indians they know not ; that the Crown was also, doubtless, at other great charges, which turned out to the private interest of some individuals.

They think their loyalty very manifest since his arrival, and suppose him well convinced of it ; he spoke well of the people in his first speech, but the change of his opinion obliged them to remind him that they gave him one thousand pounds as an earnest of their respect for him ; have raised as much for his support as for any of his predecessors, and built a noble edifice for his residence on his own plan ; had paid his house-rent while the house was constructing.

They recollect the burning of Saratoga, November 1745, and hint, that if the independent companies had not been drawn from that post, this destruction would not have happened.

That money was given for a fort at the carrying-place according to his own design, which was nevertheless applied to re-building that at Saratoga ; that they contributed a part of the militia to garrison it ; that then a line of block-houses was recommended from New England to the Mohawks' castle ; they had provided for this scheme, and the money laid out in detachments of the militia posted by his order on the frontiers. They declared their willingness to contribute to two forts at the carrying-place, and seem to doubt his declaration that any other colonies will bear a part of this burden. They declare, that nobody acquainted with the climate could be surprised at the disappointment of the attempt to fortify a camp at the time he fixed upon for that work. They assert, that the money raised for the expedition is nearly expended by the nine pounds bounty per man, the vic-

tualling of sixteen companies, one hundred men each, and other military purposes. These they think proofs of their care for themselves, and do not forget their gift for the Cape Breton expedition, with the further expense of transporting ten cannon, their carriages, &c.

They conceived that their advancements have been unskilfully laid out, for want of an engineer, and lament the delay of the person expected.

Respecting the scheme of commissioners for a joint prosecution of the war with the other colonies, they mention their having provided for it, and add, "how it has happened that nothing has been done upon that commission, is only to be conjectured." They censure the late negotiations at Albany, towards erecting two forts at the carrying-place and attacking Crown Point, with the assistance of only three of the Council, while there were six gentlemen in commission for that purpose, and no other government had commissioners there but Massachusetts Bay.

They declared that they had not confidence in the success of the expedition, and chose to wait till experienced officers, daily expected, arrived from England. They confessed, that ever since he had placed his confidence in a person obnoxious to and censured by that House, the public affairs had been perplexed, and not attended to with that steadiness and good conduct which their importance required, and did appear in the measures pursued before he bore so great a part in his councils.

To him they imputed certain late speeches and messages, and the interruption of the public harmony; denied that the traders of Albany wished ill to the Canada expedition, and charged the insinuation to the inveterate prejudices of his minister, who had grossly calumniated the distressed inhabitants of Albany, and abused his confidence.

That part of his message descriptive of the practices of Popish emissaries, they applied to another person then in his favor,\* who was bred a Protestant,

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\* John Henry Lidius, whose father was a Dutch Minister at Albany.

resided several years in Canada, married a woman there of the Romish Church, after having first abjured his religion, alleging that he was a person of desperate fortunes. To his intrigues and falsehoods they imputed the unfavorable temper of the Indians, and to Popish emissaries the perplexities of his administration.

They then assert it to be reported, that two-thirds of the Indian presents in 1745 were embezzled; and that the French and Spanish prisoners were sold, under color of his authority, to owners and captains of flags of truce, at a pistole a head; and these things they affect to mention as with a design to give him an opportunity to punish the delinquents.

They hoped that, from the whole they have evinced, they have had a due care not only of their own, but his honor and interest.

Mr. Clinton commanded an adjournment for a few days, and contented himself only with a threat of complaining to the King, and a remark, which every body else had made without doors, that this violent and acrimonious composition was not two hours before the House; so that the engrossed copy sent to the Governor, must have been prepared before the draft was brought in by the committee.

It has been before observed, that this petty army, raised upon the Duke of Newcastle's letter of the 9th of April, 1746, was to be paid by the crown. Hitherto Mr. Clinton had drawn bills to raise money for that purpose; and whether because the design seemed to be neglected at home, and he really apprehended the non-payment of his bills, or sought an occasion to embarrass the Assembly, he gave them intimations that the troops threatened to disband for want of pay; and he exacted their indemnity of his estate against the protest of his bills, or their providing money to keep the army together.

The projector of this device certainly could not reasonably hope to draw any other advantage from it, than a demonstration to government that Mr. Clinton's drafts, which already amounted to nine thousand

pounds, and for which he had the advice of his Council, were absolutely necessary ; and that end it did serve, and that only ; for the House absolutely refused to counter-secure him, declaring that his drafts were necessary to prevent the total desertion of the levies, and that his refusal to continue drawing would imply distrust of the King, and render himself answerable for the levies and estates of his subjects.

From the 4th of June, they only met and adjourned to the 4th day of August, when he called upon them to join with Massachusetts Bay and Connecticut in the attack of Crown Point, aided by as many Indians, of whose temper he spoke favorably as to their being animated to action.

But they laid hold of the objections, that as no estimate was found of the whole expense, nor the quotas of the respective colonies ascertained, they refused to concur till these preliminaries were settled.

Mr. Clinton continued his drafts for the army, till the languor of administration exhausted his hopes of any co-operation from that side of the water ; and on the 31st of August, when he flatly refused any longer to victual the four independent companies and southern levies, or to expend money upon the Indians, or transport provisions to Saratoga, he urged them to take those expenses upon themselves, for two months, till when he hoped to draw the other colonies into some contribution, and to be better informed of his Majesty's intentions. He also notified them that Oswego was in danger ; Colonel Johnson, the contractor for the supply of that garrison, requiring guards to convoy the provisions, a late incursion of the enemy upon the German Flats in that route having doubled the expense of transportation.

On which the House resolved, that the provisions of the independent companies ought not to be a charge either to the crown or the colony, while posted at Albany, they having always subsisted themselves out of their own pay, except when at Oswego or the outposts ; when there, were and should be supplied by the colony : that the southern colonies

ought to subsist their own forces; that having the King's orders to make advancement to cultivate the friendship of the Indians, it is his duty to continue them till the contrary be signified by the crown; that his bills for transporting provisions to Saratoga being paid, that expense ought to be forborne; that Colonel Johnson cannot ask an additional allowance, the Governor having importuned them on the 2d of December, 1746, that the Colonel had contracted against all events; but to protect the county of Albany, they agreed to provide for one hundred and fifty rangers, to be formed in three companies, and kept up for fifty days.

The prospect of the desertion of the fort of Saratoga by the New-Jersey troops posted there, for want of provisions, however filled every man with terror; and after a call of the House, they requested the Governor either to send a part of the New-York levies there, or, if his powers over them were determined, a detachment from the independent fusileers, for whom they in that case promised supplies of provisions.

He repeated his declarations, that he would no longer disburse money at the charge of the crown; and they, their instances for the preservation of Saratoga. Holding up the consequence of their refusal to secure the Indian interest and guard the frontiers, the Governor adds, "If you deny me the necessary supplies, all my endeavors must become ineffectual and fruitless: I must wash my own hands, and leave at your doors the blood of the innocent people that may be shed by a cruel and merciless enemy."

On the 17th of September they were adjourned to the 22d; only two bills being then passed, there was another adjournment to the 29th, and again to the 5th of October. These provoked to a resolve, that to him were to be ascribed the delays in providing for the defence of the frontier; and that a remonstrance be presented on the condition of the colony, to be prepared by Messrs. Clarkson, Van Horne, Richard, Cruger, Philipse, Thomas, Jones, and Colonel. Before the draft was reported, the Governor,

by a message of the 6th of October, laid before them a compact of their own commissioners with others from Massachusetts Bay and Connecticut.

These gentlemen had so concerted matters, as to cast the burden of maintaining the Indian alliance entirely upon the crown, though Mr. Clinton had importuned them to make that and the erection of forts subjects of contract. The message, therefore, warns them of the necessity of an immediate attention to these objects, as well as those for which the contracting colonies were to provide ; and to show them the expectations of the Indians, he communicated a copy of the conferences he held with some of their chiefs on the 26th of September last, with Colonel Johnson's report to a committee of the Council on the 3d of October.

This was soon followed with resolves to execute their part of the plan concerted by the commissioners ; to provide for the defence of the northern frontier, and for presents for the Indian sachems then in town ; that eight hundred pounds be devoted to supply the Governor's failure to support the Indian interest, though he had made large drafts for that purpose, and of which they had heard of no disposition ; that the usual provision be made for Oswego ; that they would bear their proportion of the expense towards erecting forts in the Indian cantons, as asylums to their wives and children, while their warriors were abroad ; that they will take a part of the army for the security of the frontiers into pay, as soon as they are advised of their being discharged by the crown ; that they would victual the garrison of Saratoga, and transport the provisions wanted there ; and the messenger sent with a copy of these resolves, was also to request information whether any, and what number of, troops was ordered to Saratoga.

The answer of that day was so extraordinary, that the author cannot help transcribing it.

“ By your votes, I understand you are going upon things very foreign to what I recommended to you. I will receive nothing from you at this critical junc-

ture, but what relates to the message I last sent you ; viz. by all means immediately to take the preservation of your frontiers and the fidelity of the Indians into consideration. The loss of a day may have fatal consequences. When that is over, you may have time to go upon any other matters."

They then resolved it to be their undoubted right to proceed in such order as they conceived most conducive to the interest of their constituents ; that the attempt to prescribe to them, was a manifest breach of the rights and privileges of that House and of the people ; that the Governor's declaration was irregular, unprecedented, and manifestly tended to the subversion of their rights, liberties, and privileges ; and that his *adviser* had attempted to undermine and infringe them, violate the liberties of the people, subvert the constitution of the colony, and was *an enemy to its inhabitants*.

The next day, 9th of October, Mr. Clarkson brought in the remonstrance, to which the House, immediately after reading it, ordered their speaker to set his name. They sent to the Governor that morning by seven members,\* who reported that he would neither hear it read, nor suffer it to be left with him.

While they were in suspense upon the next step to be taken, he sent them a message on the 13th of October.

That he was pleased with their approbation of the scheme concerted by the commissioners of the three colonies, so nearly agreeing with that he had planned in October last, with Governor Shirley and Commodore Warren.

That he was also pleased that his Council, before the commissioners met, had approved of his proposal concerning the erection of two forts at the carrying-place, and had made it an instruction to their commissioners to effect it at the charge of the colonies.

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\* Mr. Clarkson, Colonel Philipse, Mr. Thomas, Mr. Cruger, Colonel Beekman, Colonel Chambers, and Colonel Lott.

He observes, in an air of triumph, that when he had before urged these things, they were to have been executed at the expense of the crown; and that now they became a colony charge, through the obstructions he had met with by their clogs on the transportation of provisions to the army.

He then proceeds to refute the insinuation, that the money raised by his drafts for Indian expenses was not expended; recounts the Indian services; alleges that last year he could not get twenty of them on a scout, but that now Colonel Johnson could collect a thousand of them for service; that this gentleman had detached many of them from the French; that their object in the denial of money for these services, was to wrest the prerogative of making treaties from the crown, and to place it in the hands of popular agents of their own appointing. He accuses them also with a design to share in the military authority of the Executive; declares he will not consent to it; avers that Saratoga was burnt, and afterwards abandoned, by their negligence of his requisitions. He then attempts to justify his message to confine them to what he had recommended for the care and preservation of the colony; calls their late votes to shut their door, a farce, unless it was designed to exclude his messages; and if so, in that case he pronounced it a high insult on the King's authority, and the withdrawing their allegiance for a time.

He denied their authority to act as an Assembly, except by virtue of the royal commission and instructions, alterable at the King's pleasure. After which he thus expressed himself: "You seem to place it upon the same foundation with the House of Commons of Great Britain, and if I mistake not, by the resolves of the 9th of this month, assume all the privileges and rights of the House of Commons of Great Britain. If so, you assume a right to be a branch of the legislature of the kingdom, and deny your dependence and subjection on the crown and parliament. If you have not the rights of the House of Commons of Great Britain, then the giver of the authority by

which you act, has or can put bounds or limitations upon your rights and privileges, and alter them at pleasure, and has a power to restrain you when you endeavor to transgress. And I must now tell you, that I have his Majesty's express commands not to suffer you to bring some matters into your House, or to debate upon them; and for that reason, the custom has been long established of the Clerk of your House to show every day to the Governor, the minutes of the proceedings of your House: and it is undutiful behaviour to keep any thing secret from me, that is under your consideration. In short, gentlemen, I must likewise tell you, that every branch of the legislature of this province, and all of them together, may be criminal in the eye of the law; and there is a power able to punish you, and that will punish you, if you provoke that power to do it by your misbehaviour; otherwise you must think yourselves independent of the crown of Great Britain."

He then complained of the late method of serving him, by members, with copies of their resolutions, as ill-mannerly and unconstitutional; and then adds—"This leads me to consider a most indiscreet behaviour of some of the members of your House, who, in a quarter of an hour after I was served with a copy of your resolves of the 9th instant, came into an apartment of my house, where I was busy, and, without the least previous notice, one of them offered to read a large bundle of papers, which, he said, was a remonstrance from the House. Does not every private man in this country think his own house his castle? And must your Governor, when in his private apartment, be thus intruded upon? Would any private man bear such behaviour in a stranger; and must your Governor bear it with patience? I think, therefore, from such behaviour, without any other, I had too much reason to refuse to receive it, or to suffer it to be left with me: and from some past representations which have been openly made by your House, I never will hereafter receive any thing from your House in public, the contents of which are not

previously communicated to me in private, that I may judge whether it be necessary for his Majesty's service and the public good, to give access to me for that purpose."

He charged their omission to acquaint him of their first meeting, to design; their resolves against his late adjournments and prorogations, as encroachments upon the prerogative;—taxes them with unreasonable precipitation in adopting drafts of representations, as marks of their being led by a spirit of faction; with an attempt to defame him, and with asserting known falsehoods.

To oppose the malignant imputation of his embezzlement of the Indian presents, he states all his receipts at but eighteen hundred pounds currency; and urges to show the reduction of it before the goods were delivered, the necessary expenditures for maintaining such vast numbers at Albany, private gifts to particular sachems, a sum to the Senecas for a release of their claim to Oswego, the transportation of the Indians in waggons from and to Schenectady, and provisions for their return.

He insisted that, if they had any suspicions of waste, they ought to have asked information, or complained to the King.

He denied that they were moved by any zeal for their country in this attack; remarks that, though they have put sixty thousand pounds into the hands of their relations and friends, no accounts are as yet exacted.

He ascribed their attacks on his friends and assistants to malice; and declares that he will withdraw the independent fusileers from Albany, unless they will supply them with provisions as they do others; desires them to reflect whether their conduct is not owing either to a firm principle of disloyalty for delivering up the country to the King's enemies, or to support a neutrality with Canada, as in Queen Anne's reign, to the prejudice of the other colonies, or to overturn the constitution; or, lastly, to gratify the

malice of a few, known to have a share in their private consultations.

He concluded with renewing his demands for securing the frontiers and the fidelity of the Indians; and, to prevent delays, informs them that he will not assent to any bill for issuing the public money, but as his commission and instructions direct, or to limit or clog the prerogative respecting the disposition of the troops. "If you make any thing," says he, "contrary to his Majesty's commission or instructions, a condition of your granting the necessary supplies for the safety of the people of this province, I now tell you, that it will be trifling with the lives and estates of your constituents, by exposing them, in this time of danger, without policy, for I never will yield to it."

It was agreed by the commissioners, that gunsmiths should be sent to each of the six cantons, except the Mohawks and Tuscaroras, with goods to the value of three hundred pounds, for presents; and, as the season advanced, the Assembly signified (15th October) to the Governor their willingness to advance the money on the credit of the confederate colonies, that he might forward this service before winter. But he put them in mind the next day of other provisions equally urgent, especially as he informed them on the 19th, that the King had laid aside the expedition against Canada, and ordered the troops to be discharged, except such as were necessary for the defence of Nova Scotia; and that, by his Majesty's command, he was to recommend it to them to pay their own levies, and trust to a parliamentary reimbursement.

The privates had been paid up by the Governor to the 24th of July last, and two months' pay given to the subalterns.

He renewed his desire for taking them, or a part of them, into the service of three colonies; and they immediately voted to pay half of their levies, or eight hundred men, to the first of August, leaving it to the rest of the colonies to act at their pleasure: but they declined the discharge of the arrears, assigning their

poverty and distresses for their disappointment of the royal expectations.

On the 24th of October, the Governor thought proper, by a written order under his hand, to forbid James Parker, who usually printed the journals of the House, to publish the Assembly's remonstrance, which provoked Mr. Clarkson to relate, and the rest of the committee to confirm, the history of what passed at the offer of it to the Governor. That they knocked at the outward door, and told the servant who attended, that they had a message. That after retiring to an inner room, he came out, followed by a gentleman, and showed them into it, where they found the Governor, who expressed no displeasure. They informed him that they came as a committee of the Assembly with a remonstrance, and Mr. Clarkson offered to read it, which the Governor would not permit, nor suffer it to be left; on which they decently withdrew, Mr. Clinton only intimating, that this proceeding without the speaker was not parliamentary. Upon this, Parker was ordered to attend, and having produced the Governor's prohibition, a copy of which he had published in his Gazette, they resolved that the attempt to prevent the publication of their proceedings, was a violation of the rights and liberties of the people, and an infringement of their privileges; that the remonstrance was a regular proceeding; that the Governor's order was unwarrantable, arbitrary, and illegal, a violation of their privileges, and of the liberty of the press, and tending to the utter subversion of all the rights and liberties of the colony; and that the speaker's order for printing the remonstrance was regular, and consistent with his duty.

That the reader may form his own judgment of it, we here give him a succinct analysis of its principal parts.

It professes their design to open to him the state of the colony.

They conceive that his late messages reflect upon their conduct: and that his prorogation of the 29th

of September and adjournment of the 5th of October, were designed to prevent their vindication of themselves. Bewailing the alteration of temper and sentiments in the several branches of the Legislature, they proceed to its causes.

Their proceedings discover that there was perfect harmony on the 6th June 1746, when the King's pleasure for an expedition to Canada was announced—all conspired with one heart to promote the service, and his speeches and messages were clear, express, and intelligible; but ever since he had put his confidence in the person who styles himself, "the next in administration," arts have been used to distract and divide.

They esteemed his falling into the hands of a man so obnoxious, aiming at nothing but his own interest, a great misfortune to the country.

To prove their suggestions, they proceed to a history of their late intercourse.

On the 9th and 11th of September they had importuned him to keep up a garrison at Saratoga, and agreed not only to supply but transport provisions to it. On the 16th, they voted for the preservation of Oswego, and to consider, (though he had taken all risks upon himself) of Colonel Johnson's demands for subsistence, if by unforeseen accidents he was likely to suffer.

To the Governor's assertion, that they were acquainted with the temper of the Indians before his treaty of last year, they answer with a denial of any such knowledge, on account of the secrecy he had affected respecting Indian affairs, which he had diverted from their ancient channel by taking the business out of the hands of the Commissioners, and to this they assign their present perplexity and distraction.

They admit the reluctance of the Indians to engage in the war; and for removing aspersions observe, that the Coghawagas, in Canada, are related to the Six Nations; that they were, therefore, inclined to a neutrality, and the rather as they had declared, be-

cause their wars end only in extirpation; and they avow the opinion, that such a neutrality would have been most advantageous to the public.

Against his boasting of their utility, they deny that there has been any conflict between ours and the French Indians, or that they had brought in more than three French scalps and some prisoners; and impute his magnifying the late treaties, to a design to countenance his drafts on the crown for Indian presents, some of which drafts they suggest as being made the last summer, when no gifts were made, and that therefore he had a considerable sum in bank on that score.

They dispute his professions of zeal for the welfare of the country; charge the blood spilled at Saratoga in 1745, to his withdrawing the garrison from that post; blame him for not ordering the new levies at Albany, to go up and assist the farmers in the vicinity of that village to gather in their harvest; calling in the troops from the frontiers to Albany, and then posting them on the opposite side of the river, where they could more easily desert; for not sending out the one hundred and fifty rangers they had raised; for injustice and unfairness in his agents, respecting the musters of the army, "a matter," as they assert, "worthy of the most strict inquiry."

They then charge him with contemptuous speeches, both of them and their constituents, "from a very early time of his administration, in terms so opprobrious as are not fit to be published;" and, to vindicate themselves from the charge of neglecting the general interest of the colonies, they recite his requisitions, their compliances, and his obstacles to their further designs, by adjournments and prorogations.

In the close, they aver that, since the war, the colony had expended near seventy thousand pounds; and, as a caution against the advice of managing an Assembly by harassing them with adjournments, they declare, "that no inconveniences will divert them from, or induce them to abandon, the interests of their country."

Mr. Clinton alarmed the House by a message, requiring supplies for detachments he purposed to make from the militia, for the defence of the frontiers. As nothing could be more disgusting to the multitude than a call to services of that kind, the House dreaded their rage, and the committee to whom the message was referred, reported their surprise at this requisition; and, considering the intimation of the King's orders to discharge the army, and their late vote to take eight hundred men into pay, for the defence of the frontiers, declared their opinion, that whilst his Excellency was governed by such unsteady councils, his messages were continually varying and ambiguously penned, and that they were embarrassed with difficulties in providing for the public safety.

The Governor, says the entry of the day, in the copy brought by their Clerk, (for they did not, on this occasion, pursue their late practice of sending it by their members,) and by another message of the 2d of November, reproaches them with refusing to give the King credit for the army's arrears of pay, till provision could be made by Parliament; and though they had voted to take eight hundred men of these levies into service, yet have you not, says he, by your speaker, communicated to me as terms of that vote, that there be a reduction of one half of the pay of the officers; which no man deserving trust will accept, it being below the earnings of tradesmen and the wages of laborers. Will any man be retained but on the footing on which he was enlisted? Having no hope of engaging men upon these terms, he saw no way of saving the country without the aid of the militia; and charged their affectation of surprise to a desire of exciting the disobedience of the militia. "And for what other purpose," says he, "are the reflections of unsteady councils, continually varying, &c. thrown out at this time? Certainly councils must vary, as the events on which they are founded do. You only have given occasion to any variation in my councils."

In the reply, they confess that he had proposed to retain both officers and privates in the British pay : that on the speaker's objecting as to the officers, the Governor then expressed doubts of their success, but promised that he would do all he could for the service of the colony, when he had fixed, with Mr. Shirley and Mr. Knowles, a time for the dismissal of the army. They therefore repeat their surprise at the requisition for supplies to detachments of the militia, before the result of his consultations respecting the day of general discharge was published ; and think this a justification of their late answer of instability, and a proof "that it was neither his intention nor inclination that these forces should be received into the pay of the colony, but rather that, through want of clothing, and other hardships, they should be driven to the necessity of desertion, that the frontiers being by that means left defenceless, he might be furnished with a plausible pretence (in order to harass the poor people of this colony, for whom he continually expresses so great concern) to make detachments from the militia for the defence thereof. They conclude, that any further expectation of having the new levies continued on the frontiers, will be vain ;" and immediately voted for raising eight hundred other volunteers. They requested him to issue warrants, and to take all the proper measures to expedite the enlistments, and to pass a bill, then ready, for forming a magazine of provisions at Albany.

The Governor refused to see the messengers, or receive a copy of the vote, without the speaker.

Upon this, they compelled the printer to publish their remonstrance, and deliver ten copies to each member ; and presented an address in form, imploring him to pass the bill for provisions, before the winter rendered it impracticable to transport them to Albany. It was now the 13th of November. He gave them this answer :

That he took blame to himself for passing two bills of that nature. He had urged the necessity of the service in his excuse, and he would venture once

more; but warned them, in their bill for paying the forces, to insert no clauses derogatory to the prerogative, but to guard against misapplications and embezzlements. He added a demand of provisions for the independent companies at Albany, who, for want of supplies, were upon the point of deserting.

On the 25th of November he passed the provision bill; another for a new tax of twenty-eight thousand pounds, for the defence of the frontiers, with two others of lesser moment; and then delivering his mind in a free speech, he dissolved the Assembly.

We shall neither abstract this, nor a composition published in answer to it, under the title of "A Letter to the Governor," from some of the members, as they lead to a repetition of the history of transactions, which have perhaps already exhausted the patience of the reader.

They are both in the printed journals of the House, and are further specimens of the scribbling talents of Doctor Colden and Mr. Horsmanden, the latter having held the pen for the Assembly, or rather for Mr. Delancey, for which he was suspended from the Council, and removed from that bench and the Recorder's place, and cast upon the private bounty of the party by whom he was employed, applauded, and ruined: for such was his condition, until he raised himself by an advantageous match, and, by forsaking his associates, reconciled himself to Mr. Clinton, when that Governor broke with the man, whose indiscretion and vehemence the Chief Justice had improved, to expose both to the general odium of the colony. Until his marriage with Mrs. Vesey, Mr. Horsmanden was an object of pity; toasted, indeed, as the man who dared to be honest in the worst of times, but at a loss for his meals, and, by the impotency of his creditors, hourly exposed to the horrors of a jail: and hence his irreconcilable enmity to Doctor Colden, by whose advice he fell, and to Mr. Delancey, whose ambitious politics exposed him to the vengeance of that minister.

Mr. Clinton could not hope for any change of measures by the late dissolution. He saw Mr. Jones again speaker of the House, and all the chief leaders of the last came up to the Assembly, on the 12th of February, 1748.

The first object was the execution of the plan agreed on by the commissioners, 28th of September last, approved by Connecticut, and all but the eleventh article, by Massachusetts Bay, with some alterations: then he called their attention to the Indian interest, and the employing parties from these tribes to scour the woods; to the civil list not provided for last fall; an augmentation of Colonel Johnson's allowance for provisions to the garrison of Oswego; repairs of forts, and supplies of ammunition; rewards for scalps; the maintenance of prisoners; the charges of transporting and victualling the levies on the frontiers; the removal of the cannon from Saratoga to Albany; necessary expresses; gunsmiths in the Indian countries; the rent of his house; completing the new mansion in the Fort, stables, and other conveniences; and after persuading to harmony, promises his concurrence in all measures conducive to the King's service and the interests of the colony.

He had a very short address from the House, intimating their satisfaction in his promises, as ends truly worthy his pursuit; promising attention and despatch, but expressing some discontent with Massachusetts Bay, for not ratifying the compact framed by the commissioners.

The Governor informed them of intelligence that preparations were making in Canada for an attack on the northern parts of this colony; and hoped, as Massachusetts had substantially concurred, their alterations in the compact would be no obstacle to our exertions against the enemy. But they immediately after voted, that the alterations would in a great measure defeat the end proposed, and that they would not agree to them.

He then communicated a letter from the Duke of Newcastle, directing measures for cultivating the Indian fidelity, at the expense of the crown; and advised their improving this juncture for concerting some vigorous enterprise, in conjunction with the other colonies, against the common enemy.

On the 19th of March, and when no cross incident had as yet intervened, the House adopted the measure, so often recommended, of appointing an agent in Great Britain. They voted two hundred pounds for this purpose, among the other provisions in the annual bill for the civil list; and, to facilitate the design, introduced the vote for an agent to apply for his Majesty's assistance and to manage our public affairs, with the following preamble: "As this colony is so situated, that its northern frontiers are a barrier and defence to all his Majesty's other colonies to the southward on the continent, and lying nearest to the enemy, is continually exposed to their incursions and ravages; to prevent which, it has long been, and still is, exposed to a very great and insupportable expense, in building fortresses and maintaining forces for its defence, being at this juncture obliged to keep nearly one thousand men in continual pay on its northern frontiers, by which means the southern colonies are in a great measure secured and defended from the incursions of the French and Indians from Canada, without contributing any thing towards the heavy expense thereby occasioned."

The real design of this, was to elude the necessity of the Governor's concurrence in a legislative appointment of the person, and to engross the agent by his dependence solely on the pleasure of the House, for they meant to make him their own servant against the Governor; and the sequel will show their success.

Mr. Clinton repeated his instances, on the 30th of March, for a united attack upon the enemy, as conducive to our own safety; the recall of their emissaries from the Indians, with whom they were intriguing; and to encourage the Assembly, engaged at the expense of the crown, to keep any fort they might take.

But he could only procure a vote approving the design, and promising to pay the expense of commissioners in meeting to concert a plan; and a few days afterwards the session ended, with apparent harmony, several bills having been previously passed, viz.: for a military watch; building block-houses; the defence of the frontiers; raising eighteen hundred pounds more for a college; and the payment of the salaries of the Governor and other officers for a year; to which the Assembly had also tacked a reward of one hundred and fifty pounds to Mr. Horsmanden, for his late controversial labors, under the pretext of drafting their bills, and other public service. But as it might have been, and perhaps was foreseen, the House, just before they were called up to witness the Governor's assent and subscription, named Robert Charles, Esq. for their agent at the Court of Great Britain, and authorized their speaker to instruct and correspond with him, and at present to direct him to oppose the royal confirmation of a late act in New-Jersey, respecting the line of partition, conceived to be injurious to this province.

Mr. Charles's appointment gave the highest pleasure to the party who led the opposition against the Governor, and not without reason; Mr. Warren's activity at Louisburgh having procured him not only an interest at court and a knighthood, but vast popular applause, and excited his hopes of procuring, what his wife's relations of the Delancey family ardently wished for, his appointment to the government of this colony. The Newcastle interest in favor of the possessor, had hitherto rendered the colony politics unsuccessful, and there was a necessity for some pointed exertions against him by an agent at court, to improve and give them success. They now had this advantage; and on the very day Mr. Charles was nominated, Mr. Speaker Jones despatched a letter to him, which, as it exceeded the authority given him by the vote of the House, gives some countenance to Mr. Clinton's assertions, which every one knew to be

true, that the late Assembly had been influenced from without doors.\*

The Governor and his Assembly came together again on the 21st of June, when he informed the House, that unless the Indians could be engaged in some enterprise, he feared their total defection, and pressed the attack on Crown Point. He purposed to meet them and distribute presents in July, at the expense of the crown; and proposed an act to prevent purchases from the Indians, of arms, ammunition, and clothing, and sales of rum to them, without *his license*. He asks money for new fortifications, according to the plans of Captain Armstrong, an engineer sent out to direct in that business; recommends the defence of their commerce against privateers then infesting the coast; provision for maintaining French prisoners, and the redemption of our own people, and rewards for scalps.

\* The vote was this:—

“9th April, 1748.

“ORDERED,—That the speaker of this House for the time being, do hold and correspond with Robert Charles, Esq. agent for this colony in Great Britain; and that he do from time to time sign and transmit to the said agent, such instructions, directions, and representations, as shall be judged proper to be sent to him for his conduct.”

Mr. Jones's letter is in these words:—

“New-York, 9th April, 1748.

“SIR,—In consequence of a recommendation of Sir Peter Warren, you are appointed agent for this colony, with a salary of two hundred pounds per annum, New-York currency, for transacting the public affairs thereof in Great Britain. You are to pursue all such instructions as shall from time to time be sent you, signed by me, as speaker of the General Assembly; in the execution of which instructions, you are always to take the advice of Sir Peter Warren, if in England. You are to take all opportunities of advising me, or the speaker of the General Assembly of this colony for the time being, of all your proceedings on the several matters as shall from time to time be given you in charge, and of all other matters which may occasionally happen, whereby this colony may be any ways affected. You are not only to take such opportunities as offer directly for New-York, but to transmit accounts both by way of Boston and Philadelphia, as occasion may require. You are to keep an account of the expense you may be necessarily put to, in your applications for the service of this colony, and transmit them to me, or the speaker of the General Assembly for the time being, in order for payment. I send you the act wherein you are appointed for this colony, passed but this day, so that I cannot yet write to you so fully as I expect shortly to do. In the mean time, you are to observe the preceding directions, and those that follow, to wit: You are to endeavor to obtain the royal assent to the three following acts, to wit: “An act

Mr. Clinton had, on the 18th of February last, given the command of the troops in the pay of the colony, for the defence of the frontiers, to Colonel Johnson; the same who, living in the Mohawk's country, on the route to Oswego, had been contractor for supplying the garrison there with provisions, and he took this opportunity to ask an allowance for his trouble.

The House gave a vote of credit for a flag to Canada for an exchange of prisoners; expressed surprise at his urging the Crown Point expedition, since the Massachusetts province would not ratify the compact of the commissioners, and had withdrawn their stores from Albany; agreed to take up the other matters recommended in the fall; and now only sent up a bill, which was passed, agreeably to his own request in the message. They sat but ten days, and without open animosity, though a motion of Colonel Beekman's had given an opportunity to revive it.

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for limiting the continuance of General Assemblies, passed in the seventeenth year of his Majesty's reign," not yet approved of by his Majesty; "An act for appointing commissioners to take, examine, and state the public accounts of the colony of New-York, from the year 1713;" and "An act for the more effectual cancelling the bills of credit of this colony," the last two passed this day. If the reasons on which the said acts were severally founded, contained in their respective preambles, are not judged sufficient to induce an approbation, you are to endeavor to prevent their being rejected until you can advise the General Assembly of it, and have their further directions. An act having lately, as we are informed, been passed in the neighboring colony of New-Jersey, for settling the boundaries between that province and this, which we apprehend may, in its consequences, greatly affect the property of many of the inhabitants of this colony, and very considerably diminish his Majesty's revenue arising by quit-rents, you are to endeavor to prevent its receiving the royal assent, until this colony can have an opportunity of making their objections, and of being heard against the said act."

It is worth a remark, that Mr. Charles afterwards informed the speaker, that the septennial act had not been transmitted to the Board of Trade; and that Mr. Jones, in his answer by his letter of the 2d of June, 1749, writes thus:—"Since you cannot find that the act of this colony, for limiting the continuance of the General Assembly, has ever been transmitted, you need give yourself no further concern about it, until you find it received at the Office of Trade and Plantations." There wanted no motive at this time to censure the concealment of that popular law from the eye of administration, if it could only be charged upon the Governor: but the boldness of the measure is equal to the art of the leaders of the day when it passed. It remains a secret who advised to it, and perhaps because both parties shared in the guilt.

Certain discharged soldiers of a company, commanded by Captain Ross, raised for the Canada expedition, had sued, and others intended to bring actions against him, for their pay. The Governor had written to a county court Judge, and Catherwood his Secretary, to the Clerk and Sheriff, against the issuing and service of the process. The House, agreeably to the motion, appointed a committee to make the proper inquiries, and report their opinion. But nothing further was done; for the Governor, upon sight of the journal, wrote to the speaker, owning that letters were written touching deserters, and only recommending it to the officers of the courts to put a stop to the claims of deserters with his Majesty's arms and clothing, who had thereby forfeited their pay; and that if this could be construed a violation of the laws, it was owing to inadvertency, and without any injurious intention, and that he was ready to recompense all damage the public had sustained. The House referred this letter to a committee of the whole, and took no further notice, at that time, of Mr. Beekman's information.

When they met in the autumn, (14th October,) he congratulated them on the prospect of peace, and complained of inequitable terms proposed by the Governor of Canada for a release of prisoners; and asked a five years' support, agreeably to precedent in the times of his predecessors, Hunter, Burnet, Montgomery, and Cosby; said he had not started objections to the annual provisions on account of the war, *the advice he then received*, and his desire to give content; but that he now thought it a proper time to resist the innovations which had weakened the King's government; that he should consent to their annexing the salaries to the officers in the act, but not to the officer by name. He then urged a discharge of two thousand one hundred and thirty-eight pounds, withheld from Colonel Johnson, by reason of the deficiency of the fund out of which he was to be satisfied; provision for arrears to the army, for expresses,

the exchange of prisoners, and the finishing the new edifice at the Fort.

This was raking up the old embers, and disagreeable to every body but Colden and Delancey. Their address intimated a disinclination to continue the rangers in pay; that the three independent companies at Albany (which ought to consist of a hundred men each) would suffice, with the old peace garrison at Oswego.

Their ill success in the Canada cartel, they impute to the low characters of the envoys he had sent to Mr. Vaudreuil, the Governor of that country.

They declared that they would not depart from the modern method of annual support bills; adding, with Mr. Horsmanden's pen, that "had the salaries been annexed to the office, himself (under the unhappy influence he then was) would have filled the office of third Justice of the Supreme Court, with some unworthy person in the room of a gentleman of experience and learning in the law, whom you removed from that station without any color of misconduct, at least as we ever heard of, under the sole influence of a person of so mean and despicable a character, (as the General Assembly has several times heretofore occasionally signified to you,) that it is astonishing to us that your Excellency should persist in submitting your conduct to his sole counsel and guidance."

They told him not only that he was well advised when he first assented to the annual support, but that "he did it for ample and sufficient reasons, and *good and valuable* considerations, as we have understood, in acceding to those terms."

After a copy was sent to the Governor, he signified by a message, that they had shown no regard to decency, and that he should not receive such an address.

He then repeated what was most necessary for the public service; says his envoys to Canada were the best he could get; and adds, "you are pleased to give the characters of some persons that I have had better opportunities to know than you can have had;

however, I believe that by this paper, (the address,) some men's characters will be very evident to every man who shall read it, and who has the least sense of honor."

On this, they made an entry of the declaration of their messengers, who were sent to know when he would receive the address in substance, that he said he had not seen a copy of it; on which they had given it to him without any order of the House so to do: and thereupon they resolved, that it is irregular, and contrary to the course of parliamentary proceedings, to send a copy, and that the Governor had no right to insist on such a copy; that it was their right to have access to him on public business; that his denial of access was a violation of their rights, contrary to his solemn promise to the speaker, tending to the destruction of all intercourse, and to the utter subversion of the constitution; and that whoever advised it, had endeavored to create dissensions, stop the intercourse for public business, and is an enemy to the General Assembly of this colony, and of the people whom they represent.

Notwithstanding these violences, the Governor passed three bills on the 28th of October: one for reviving that to raise eighteen hundred pounds for a college by a lottery; another to continue the duty act for the support of government; and a third, for the payment of the forces. On the 12th of November, he sent for them again, and passed three more bills, and then, in a speech in answer to their resolves, observed:

That it was his duty to preserve the King's authority; that they violated the rules of decency, and were answerable for the consequences; that their right to access, and his promise to allow it, are connected, and both to be, when the King's service and the public good require it, of which he had a right to judge as well as they.

He then censures their appealing to the people instead of the Crown, to whom he had told them he should send their paper of address.

He confesses that he passes some of their bills with reluctance, and only on account of the public exigencies; and then put an end to the services of the year, by a long prorogation to the 14th of March.

The poverty and number of the public creditors, and the sufferings of the unredeemed captives in Canada, called for an earlier meeting of the Assembly than the 28th of June, a season of all others most inconvenient to a Senate of husbandmen, who were just then entering into their harvests. The Governor had need, therefore, of an apology for postponing the session; and his expectations of direction from government on the modern mode of providing annually for the civil list, was the pretext for this delay. The speech held up no other object to their attention: what he demanded was a revenue, and the payment of debts, in a manner conformable to the directions of the King's commission and instructions. Having at the last session passed the revenue bill, without another to supply it, which had not been offered to him, he now observed, that there was money in the Treasury granted to his Majesty, not a farthing of which he could pay out. This he called an inconsistency, repugnant to the constitution, prejudicial to the King's service, and which, he said, must be remedied: and he required an answer in direct and positive terms, before they took up any other business, whether they would grant a revenue agreeably to royal directions, or not.

With a copy of his speech, he gave them a clause of his commission, dated 3d of July, 1741, declaring it to be his Majesty's pleasure, that all public monies be issued by the Governor's warrant, with the advice of the Council, and disposed of for the support of government, and not otherwise; with copies of the fifteenth and thirty-second instructions of the 10th of September, 1741; the former requiring, that no law for any imposition on wine or other strong liquors, be made to continue for less than one whole year; and that all other laws for the supply and support of government, be indefinite and without limitation,

except the same be for a temporary service, to expire and have their full effect within the time therein prefixed ;—and the latter, commanding him not to suffer any public money whatsoever to be issued or disposed of, otherwise than by warrant under his hand, with the advice of the Council ; with leave to the Assembly nevertheless, from time to time to view and examine the accounts of money, or value of money, disposed of by virtue of laws made by them, which he is to signify to them as there should be occasion.

After seven days, their committee brought in their address, which was instantly approved, and the speaker ordered to sign the very copy prepared, of which mention is here made, to show their unanimity, though the Governor thought it, and not without reason, a proof of the resignation of the members to an implicit confidence in their leaders.

They tell him that his instructions are not new, though he insinuates that they are, but more ancient than the modern annual provision ; that they perceive no command for a five years' support, nor that, if the crown officers are paid, that it makes any difference whether the provision be annually, or for a given term of years ; that they retain the opinion they suggested last autumn, having since received no new light, that the distresses of the public creditors are imputable to his prorogation of the 12th of November, by which the application bill was lost : they remind him of their votes for the redemption of the captives ; and conclude with asserting, that "the faithful representatives of the people can never recede from the method of an annual support."

The Governor refused to receive this address, until he had a copy of it ; and they resolved, as before mentioned, that he had no right to insist upon it.

He, on the other hand, alleged, that the King always had copies of addresses before they were publicly preferred, and that such had been the usage in this colony ; and that he claimed a right to know their transactions, because he had authority to restrain them to a due course. Taxing them with heat

and precipitation, he observed, that they met after nine o'clock, when they received and approved the address; and that the messengers were with him for fixing a time to present it, before ten the *same* morning.

Confessing now that he had seen it in the minutes brought by the Clerk, he informed them that they might present it immediately. This done, he adjourned them from the 7th to the 11th; and the day after, by a message, he observes, upon the difference between his conduct and theirs, that after every prorogation, he spoke as though they had never disagreed, but that they constantly calumniated his administration. He proceeds then to vindicate himself from the suggestions, that the non-redemption of the Canada captives was his fault; that he could not find a man who would perform any services for them upon the credit of their resolves, nor was it to be wondered at, since they had not, though urged to it, paid the expenses of the last flag, contracted on their vote of the 27th of June, 1748. He complains of their perverting his speech, with a view to mislead; denies that his present demand was for a five years' support, but that it chiefly referred to the method of issuing public money; that he knew the sentiments of administration, "and they might have at least guessed at them, by the bill lately brought into Parliament, and published in this place, for enforcing the King's instructions.\* It is an essential part of the English con-

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\* A bill to regulate and restrain paper bills of credit in the colonies, prevent them from being a tender, and to enforce the King's instructions. It was ordered to be brought in the 16th of February, 1749, by Mr. Horatio Walpole, Lord Dapplin, Mr. Alderman Baker, and others. It had been long in agitation at the Board of Trade, and was nearly on the model of one brought into Parliament four years before. Mr. Charles gave early notice of it to the speaker, by a letter of the 2d of March, 1749. The last four clauses insidiously gave the royal instructions the efficacy of laws. It was at first little adverted to, and when its tendency was discovered, the advocates disowned the intention ascribed to it. When the counsel were ready, (1st of May, 1749,) they were directed by the speaker to confine themselves to the first parts of it, in consequence of a declaration made by some of its promoters, that the other parts would be dropped. The bill, after debate, was postponed for further information concerning the state of the paper currency in the plantations, and the King applied to for orders on that subject.

stitution, that the power of granting the money and of issuing it, be in different branches of the constitution, as the best method to prevent misapplication; for if those who grant the money, had likewise the power of distributing it among their friends and relations, under any pretences of public service, there can be none to call them to account for misapplication." And again: "You have given money to private persons for services not recommended, and for services of which I to this day remain ignorant; and by mixing of the grants in the same bill wherein you provided for the support of government, or other necessary services, you put me under the necessity of giving my assent to them, or of leaving the government without support. This is so dangerous an invasion of his Majesty's prerogative, and so injurious to the people of this province, that you may assure yourselves it will not be suffered to continue."

He importunes them for satisfaction to Col. Johnson; and closes with entreating them to consider "the great liberties they are indulged with, and what may be the consequences, should our mother country suspect that you have a design to lessen the prerogative of the Crown in the plantations. The Romans did not allow the same privileges to their colonies which the other citizens enjoyed; and you know in what manner the republic of Holland governs her colonies. Endeavor, then, to show your great thankfulness for the great privileges you enjoy."

The House tells him, by another address, that he had renewed the differences by the demand of a five years' support. They had agreed suddenly to their last address, but it is true, and not the less so for being spoken in half an hour. They see still no reason why the captives were not released: their waiting for accounts, was the cause of their delay in providing for the expenses of the late flag, and the satisfaction of Colonel Johnson's demands.

To his boast, that he had neither invaded liberty or property, they reply with a wish, that the breach upon the stores at Albany, the letters to the Judge,

Sheriff, and Clerk of Dutchess, and his attempts upon the liberty of the press, were buried in oblivion. They submit to the judgment of the world, whether the object of his last speech is not an indefinite support. They insist that many services are provided for by Parliament, not recommended by the Crown; that for every provision they make, the act mentions the service; that it is himself that endeavors to mislead the people. They admit it to be the usage of Parliament to raise sums for uses, and leave the disposition to the King: but there is a difference between Kings and Governors—the case of a people under the royal eye, and those at a distance. The King can have no interest disunited from his subjects, and his officers are amenable to justice in Great Britain: but Governors are generally strangers, and without estates, in the places they govern; seldom regard the welfare of the people: uncertain in their stay and offices, all engines are contrived to raise estates; and they can never want pretexts for misapplication, if they had the disposition of money. Nor can there be any redress; the representatives cannot call them to account—they cannot suspend the Council: the Lords of Trade have thought it reasonable to oblige the Assembly, as much as possible, with the disposition of public money; they will not believe the King has other sentiments.

The Governor refused this address, but proposed to throw the services not recommended by him into a separate bill; and sent them a copy of his twelfth instruction, importing, that for different matters distinct laws be enacted, but nothing foreign from the title inserted, and that there be no implicative repeals.

The House, flamed again, renewed their resolves on the right of access, and the enmity of his adviser; refused to proceed, until they were satisfied for the injury their address received; and that they would then provide for the public creditors, whose disappointments they impute to his prorogation of the 12th of November.

To these which they sent him, he returned his former answer, that the address wanted respect, and he should lay it before the King's Ministers; and re-implored their commiseration of the public creditors. This message they voted not only unsatisfactory, but a breach of their privileges; and did nothing after it but meet and adjourn, from the 21st of July to the 4th of August; when, after delivering a long, heated, vindictory speech, he prorogued the Assembly.

Mr. Clinton began to discern, that the heated councils of Mr. Colden on the one hand, and of Chief Justice Delancey on the other, might endanger his recall to England, or the appointment of a new Governor.

He now became intimate with Mr. Chief Justice Morris, who was meditating a voyage to England, to give success to the project of the general proprietors of New-Jersey, for establishing the line of partition between that colony and this.

I have already observed that Mr. Charles, though agent, was directed in April 1748, to oppose the royal confirmation of the Jersey act for running the line. Mr. Morris, who was named in a commission with Mr. Alexander and Mr. Parker, had produced the commission and a copy of the act to our Assembly, on the 28th of June following, and desired, if there were objections to it, that they might be communicated to the Commissioners, or to the government of New-Jersey. On the 20th of October, there was a petition from certain persons affected by the New-Jersey claims, to be heard against the new act. They were heard the 28th of October; and the next day the House resolved, that their objections were strong and well grounded, and the petitioners ordered to prepare written proofs to support them, to be communicated to Mr. Charles; and a motion of Col. Morris's, for charging the proprietors with the expenses of the controversy, rejected on the previous question.

It was expedient to the Governor that the King's ministers should be made acquainted with the true springs of the opposition to Mr. Clinton, and his con-

duct defended by suggestions not easily, nor perhaps safely, to be communicated upon paper.

Mr. Morris's voyage furnished the Governor with a solicitor of no mean art and address, and he undertook the office with the more cheerfulness from the animosity which had long subsisted between the families of Morris and Delancey, the hope of becoming Lieutenant Governor by Mr. Clinton's interest, and of engaging the influence of the Newcastle patronage in favour of the proprietary object for establishing an advantageous boundary projected by Mr. Alexander in the year 1719.

Mr. Colden could not be an advocate in every part of this scheme, as it would deprive him of the succession to the command as eldest Counsellor, and he hoped by his zeal for the prerogative to recommend himself to the rank aimed at by Mr. Morris. He was, therefore, to be used no longer than till he had assisted in such representations of the state of the colony as Mr. Morris was to be charged with, in justification of the Governor, and for drawing down the resentment of the Crown upon his opposers. The Governor's intentions, in favour of Mr. Morris, were to be a secret. Mr. Colden was afterwards dismissed, and the loss of his services supplied by Mr. Alexander, with whom Mr. Clinton had a good understanding, and for or by whom he had been prevailed upon to write a letter to the Lords of Trade on the 7th of October 1748, (not discovered till 1753,) calculated to facilitate the King's confirmation of the Jersey act, for the establishment of the line of partition so much desired by the proprietors of the eastern part of that colony.\*

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\* They made use of it before the Commissioners for plantation affairs at the hearing on the opposition to the confirmation of the Jersey act. Mr. Charles procured a copy of it, and transmitted it to Mr. Jones in his letter of the 12th June 1753, and it gave such umbrage to the popular party of that day that it deserves a place in these notes :

“ MY LORDS,

“ I some time since received a copy of an act, passed by the Legislature of New-Jersey, for running the line of partition and division between that

The Lords of Trade were easily excited to espouse the cause of the Governor, and began an exhibition of the state of the colony to his Majesty, but proceeded so slowly that Mr. Clinton's hopes of a victory over the Assembly, whom he had frequently prorogued in expectation of it, were exhausted. He, therefore, dissolved the House, determining, if he was not supported by the ministry, to give way to the anti-Cosbyan doctrine of annual supplies, and the rather, because it was impossible for him to form a party in his favor, till the clamors of the public creditors were appeased.

Mr. Jones had the honor to be seated again in the chair when the new Assembly met on the 4th of September 1750, in which but six new members were introduced.

The business opened by the speech was, the support of Oswego, an attention to the Indians, provision for the officers of government who had been two years unpaid, and the discharge of the public debts. In framing bills for raising money, he recommended a

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province and this, and was at the same time informed, that the Jersey proprietors intended to apply for his Majesty's royal approbation of the same. There have been many disorders committed on the borders of these provinces, occasioned by the lines remaining unsettled. Of some of these disorders I had information given me by the late Governor of New-Jersey, by whom I was required to join in the settlement of the line, pursuant to acts then and still in force in both provinces for that purpose; which I should have readily done, but, upon inquiring into the matter, I found that the sum of £300, formerly raised in this province by act of the 4th King Geo. I. had been long ago drawn out of the treasury and paid to commissioners and surveyors employed in that service and are since dead, and no other money was ever appropriated in this province for that service that I can learn. I also found, that all the lands along the line, for many miles within this province, were granted away to private persons, upon trifling quit-rents to the owners of the lands. I referred the matter, and recommended an amicable agreement between them and the Jersey proprietors, who had a meeting for that purpose, but nothing was agreed upon. As it does not appear to me, that the interest of the Crown or of this province, in general, are in any ways concerned in the matter, but only the patentees of the lands along that line, I shall decline giving your Lordships any trouble in the affair, leaving it to the particular persons concerned to take such steps as they shall think proper. Thus much I thought it necessary to say, in order to explain the reasons of my conduct in this affair, and am with great esteem, &c.

“Fort George, in the city of New-York, 7th Oct. 1748.”

conformity to his commission and instructions, remarking, that these were planned at the revolution by those great ministers so distinguished by their knowledge and zeal for the constitution. This was thought necessary, not only to prevent a popular triumph, but that the Governor might not, by the arrival of any instructions, be exposed to retract with disgrace. Besides, it inspired the House with some dread, many of the public creditors imputing their disappointments rather to party rage than patriotic designs.

The Assembly, unwilling to cavil at the commencement of the session, presented a short and cold address—thanking the Governor for his promise to promote the peace and prosperity of the colony, and giving him theirs of an immediate attention to what he had recommended.

The session continued to the 24th of November, the Governor and his Assembly proceeding with equal caution. *They* fearing that he would reject the annual support bills, and *he* their keeping them back. Both were, therefore, pleased at the close of it, for thirty-five acts were then passed of general or particular utility: the currency of paper money prolonged; the credit of our staple of flour secured; most of the public creditors satisfied; the arrears of the officers of government paid, and provision made for them and the agent for the ensuing year; and the digest of the laws of the colony, beginning at the revolution.

Among the causes for the present moderation of the Assembly, I must not omit the intelligence of the attention of government to the true sources of the public animosities. It was communicated to the House by Mr. Charles, and it cooled the ardor of their leaders. “I am informed (says he in his letter of the 29th of March 1750) that the Board of Trade are now preparing a representation of the state of the province of New-York, to be laid before his Majesty in Council; and I understand, time will be given to

all persons interested to be fully heard, before any determination shall be made thereupon."

It was at this session that the expense of opposing the Jersey partition act was voted to be a provincial charge, an advantage derived to the New-York proprietors from the party spirit of that day, influenced by the Delancey family, and stimulated, in part, by a small interest they then had in the patent of the Minisink, affected by the Jersey claim; but much more to sacrifice to the idol of popularity, and cross the new confidants on whom Mr. Clinton now relied. It will appear in the sequel, that they duped their countrymen more for the same views, till they were no longer of any use to their ambition, and that when one of the demagogues of that House became himself, several years afterwards, a proprietor of New-Jersey, the interest of New-York was abandoned, and by his influence and artifice sacrificed to his avarice.

Mr. Speaker Jones's letter to the agent showed not only the spirit and idea of the Assembly respecting the New-York title, but Chief Justice Delancey's opinion was then strenuously contended for in all companies by him and his party. Mr. Charles had hinted at the propriety of leaving the controversy to commissioners, as the proper mode for settling it; to which it is answered—"As to your intimation of having commissioners appointed for ascertaining the line of partition, I am to acquaint you, that inasmuch as the Crown is concerned as well as many hundreds of his Majesty's subjects of this colony, we choose to have a hearing and rely on the merits of our cause, unless the agents for New-Jersey will agree to be governed by the boundaries of the patent, granted by King Charles the second to his brother James Duke of York, the 12th March, in the 16th year of his reign, which boundaries, given by the Crown to the Duke of York, are as follows, viz.—'All that island or islands, called by the several names of Masowacks or Long Island, situate, lying and being to the west of Cape Cod, and the narrow Higgansett, upon the main land between the two rivers there called or

known by the several names of Connecticut and Hudson's river; together with the said river called Hudson's river, and all the lands from the west side of Connecticut river to the east of Delaware bay, with the powers of government.' If then the Jersey agents will agree, that the head of Delaware bay, which is at Reedy Island, is their north bounds on Delaware, which we conceive is conformable to the patent from King Charles the second to the Duke of York, and run a line from thence to the latitude of 41 degrees on Hudson's river, we are willing commissioners should be appointed to see the line run; for as to the boundaries described in the patent granted by the Duke of York to John Lord Berkley, &c. we conceive, they are no otherwise to be regarded in this dispute than as fixing the north bound on Hudson's river, because the said Duke could not extend his grant to them higher on Delaware bay or river than was granted to him by his brother King Charles the second; the north boundary of which grant from King Charles we take to be at Reedy Island, or the head of Delaware, at that place where that river divides itself into two branches, commonly called the Forks of Delaware, and run a line from thence to forty-one degrees of latitude on Hudson's river—this colony, with the assent of the Crown, will agree to it, and that commissioners shall be appointed to see it run; otherwise you are to proceed to a hearing, and to insist on the boundaries granted by King Charles to his brother the Duke of York."

So early as at this time Mr. Clinton gave notice of the activity of the French emissaries in practising upon the Indians on the river Ohio. He proposed a treaty with them in conjunction with Mr. Hamilton the Governor of Pennsylvania, to secure their fidelity. The Assembly excused themselves in an address, on account of their burdens during the war, of which that province, though benefited by them, had borne no part. The Governor gave them a calm answer, and offered his services if they would provide for the expense. The House then voted eight hundred

pounds for presents, and one hundred and fifty pounds more for his disbursements in attending a new treaty with the Six Nations ; but offering to provide for them by a separate bill; to which the Council proposed amendments (not concurred in because it was a money bill) it was lost, but the substance of it tacked to the salary bill. The French scheme of settling and fortifying in that part of the Indian country, was one of the principal causes of the new war of 1756 ; nor shall I omit, that it was at this session the House adjudged the arrest of a candidate on the day before his election to be a member of the House to be illegal.

It was the case of Mr. Tappen, chosen one of the representatives of Dutchess county. The Sheriff had him in custody on civil process for debt, and his colleague, Colonel Beekman, moved for his enlargement and attendance. The prisoner brought his habeas corpus returnable in term, while the House was sitting, and moved to be discharged by the Court. There were, at that time, but two Judges. The legality of the imprisonment on the day of election was contested at the bar, and the Court being divided, the prisoner continued in confinement till he carried his point in the House, but not without a division, in which Mr. Clarkson, Mr. Richards, and others supported a motion, that it was dangerous to the country to take a man from the jail for debt and admit him into a House consisting but of twenty-seven members. He afterwards absconded, and a writ issued for a new election.

The opinion of the majority gave no small offence without doors ; but the contradiction on the bench was applauded as a master-stroke of policy to preserve the concord which subsisted between the Judges and Assembly—Mr. Philipse being a member, and Mr. Delancey's opinion agreeable to the judgment of the majority in favour of Mr. Tappen—the Judges reading the reasons for their respective decisions with rapidity. The puisne Judge's real or affected passion on Mr. Delancey's argument and opi-

nion, afforded no small merriment to the practisers, this diversity being ascribed to the policy of the Chief Justice, who had no inclination to differ with any of the leading members of the House. It is proper to remark, that there was no act of the colony in force respecting the privileges of the members, from which the junior Judge drew consequences, which Mr. Delancey eluded by rising to the higher sources of the common law, and by applying the liberty of attending on the judicatures and courts to those on the court of elections, he deduced by arguments, *ab inconvenienti*, and his main conclusion, that the arrests of Mr. Tappen were void.

It was a fault of this Assembly that no applications were made to Parliament on the bill respecting the importation of iron from America, by which the colonies were restrained from erecting slitting mills, &c. The agent had given early notice of it in his letter of the 29th of June 1749:—"It gave me pleasure," says he, "to find by some hints thrown out in the House, that there is a probability of getting something done to encourage the iron-mines of America. This is a matter in which most of the colonies are concerned, and well deserving their joint efforts. It likewise demands the attention of this kingdom, as nothing is more demonstrably the interest of Britain than to receive from her own colonies, in exchange for British manufactures, a commodity for which a balance is now paid in money to foreigners; and it is to be hoped, that an encouragement of this kind would, in its consequences, be a means of promoting the growth of hemp as a fit assortment of a cargo for Britain." Nor was it enough that their Speaker had desired Mr. Charles to use his greatest efforts against the four last clauses of the bill relating to paper money, for enforcing the obedience of the colonies to the royal instructions, of which we were apprised before the last session of the preceding Assembly; the Speaker's letter, for the opposition, bearing date the 29th of June 1749.

The party animosities of the day engrossed the general attention ; and the proprietors of the iron furnaces (of which there were only two, that at Sterling, owned by Mr. Smith and others, and Mr. Livingston's at Ancram,) less vigilant than Mr. Allen, who instantly began a slitting mill in Jersey, lost an opportunity for advancing their own and the interest of the colony. While the iron bill was under consideration in the House of Commons, Mr. Chief Justice Morris, to serve his country, consented to be examined respecting the works in America, and felt all the distress which the public detection of a want of information will necessarily create in a delicate mind, where there is a disappointed ambition to excel. He could never recollect that hour without a great degree of that confusion and anxiety which led him to counterfeited a sudden indisposition for withdrawing himself from a situation in which he could neither sustain the ridicule of others, nor his own consciousness of incapacity and disgrace. Some members of the committee, whose aims he was brought to traverse, addressed him on their questions by the title of "my Lord Chief Justice," that his imperfect answers might have the less weight ; and certainly they succeeded in their design ; for though Mr. Morris had professed his knowledge of this branch of business, he found himself entirely ignorant, not only of the process of the work, but of the artificers employed in it, and the wages they received both in Great Britain and America.

Mr. Clinton improved the interim before the next call of the Assembly, in animating several other governments to watch against the French artifices in corrupting the fidelity of the Indians, intending to hold a treaty with the Six Nations in the summer of 1751. Previous to his voyage to Albany he called the members to a condolence on the death of the Prince of Wales, and to a further contribution for the savages. Both ends were answered. An affectionate address, in which they all joined, was transmitted to the King : the design of a treaty approved, with pro-

mises to supply the deficiency, if any there should be, for brightening the chain of alliance with the "*Six Nations, who depend immediately upon this colony.*" But at their interview in October, there were early indications that the spirit of party was not yet extinguished, though some of the chiefs of the opposition were dead.\*

The speech asked for, the discharge of what was still due to the public creditors; an attention to the Indians, the French being assiduously intent upon debauching them; and for the support of government, with a due regard to the royal commission and instructions.

There was an immediate call of the House, and in the address, a promise to provide for the government; to pay just debts; an intimation of surprise at further demands for the Indians; a complaint that some of the members had not circular letters to notify this meeting, and a request that it may not be omitted in future. It was another bad symptom, that they did not send him a copy of it. The answer, therefore was communicated by a message.

That they should have an account of the thousand pounds he had distributed among the Indians; that the Deputy Secretary had orders to send letters to all the members, and he had assured him they were despatched to every one except the Speaker, but that this last was not usual, it being customary for him to attend the Governor before a prorogation expired. He recommended a union of Councils, and hoped, he said, to convince them, that no consideration whatsoever was of any weight with him, but the welfare and prosperity of the people committed to his care.

The flame did not break out till the 18th of November, when Colonel Johnson came down with a message from the Council for the vouchers of the several demands provided for in a bill sent up for the

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\* Mr. Clarkson, Mr. Justice Philipse, and Mr. Micheaux.

payment of the colony debts, and the accounts which the Governor had sent or recommended for discharge. They voted this an unprecedented and extraordinary demand. The Council asserted it to be their right, and resolved not to proceed on that bill until they were gratified; and sent down another of their own, for applying five hundred pounds for Indian affairs and the repair of Oswego. This the Assembly would hear but once, and rejected it for intrenching "on the great, essential, and undoubted rights of the House, to begin all bills for raising and disposing of money."

They then prepared an address, lamenting the want of more money for the Indians, suggesting that the unsettled state of their affairs proceeds from misconduct or inattention, and that they made no provision for repairs at Oswego for want of estimates; complaining of the Council as the authors of all the bad consequences of the bill to discharge the colony debts, it being a breach of trust to consent to their claim of inspecting accounts; and praying that he would pass such bills as he approved, and give the House a recess for the winter.

After the delivery of this address, the Governor declared he could give no answer to it before he had consulted the Council; and two days afterwards informed them, that Colonel Johnson had the merit of dissuading the Indians from their old practice of going to Canada for an exchange of prisoners, and inducing them to entrust them to the Governor, as subjects of Great Britain; and at the same time communicated a copy of a letter from the Indian interpreter, demonstrating that the French were indefatigable in endeavoring to defeat this advantageous innovation.

On this they resolved, with a puerile censorious inuendo at their first meeting after May, to provide for the "strings and belts of wampum which the interpreter might find necessary for transacting the business he had in charge from the Governor;" that it is a part of their Speaker's duty to attend Governors

in the recess of the House; that the omission of a circular letter to the Speaker was dangerous and dilatory; and for an address that it be not hereafter neglected.

Mr. Clinton prudently shunned all altercation, convened both Houses the next morning, passed the bills that were ready, and, without the least previous intimation and to the astonishment of all present, dissolved the Assembly, who, finding themselves laughed at without doors, repented their passing the support bill for the year so early in the session, which gratified the officers of government, while their neglect of the colony creditors added to the Governor's party, already strengthened by Mr. Alexander's temper, the appointment of Colonel Johnson to the Council, and Mr. Chambers to the second place on the bench.

The influence of the Chief Justice was, nevertheless, so prevalent, that he had a great majority of friends and relations in the new Assembly, convened on the 24th day of October 1752.

Mr. Alexander and Mr. Smith,\* upon whom the Governor now relied, knew their connexions before Mr. Jones was re-elected to the chair, and sagaciously advised to short and general speeches, and such messages afterwards as were least calculated to enkindle the party fires which Mr. Colden's incautious, luxuriant compositions and high principles had so often exasperated, to the advancement of the popularity of the person he meant to pull down. The whole speech, the address, and answer, as contrasts to the prolix transactions appearing in the journals of former years, are here transcribed.

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\* From the abatement of the Cosbyan quarrels, in Mr. Clarke's time, Mr. Smith had totally resigned himself to that wide field of business which his eloquence had opened to him, without interfering in the general politics of the country. On the death of Mr. Bradley, the Attorney General, he could not avoid giving his assistance to the Governor, in gratitude for his unsolicited appointment to the succession. His private diary has a memorandum in these words: "28th August 1752, Richard Bradley died, and I was, without asking, appointed Attorney and Auditor General. On the 31st August received my commission and was sworn into the office."

“As sundry acts which greatly concern the trade and welfare of this province will, by their own limitation, expire the first day of January next, I have appointed this meeting with you, to give you an opportunity either to continue those acts, or provide otherwise in the place of them. The state of the Indian affairs, and of the frontier forts and fortifications in general, require your most serious consideration, timely provision, and aid. I shall, by the Deputy Secretary, lay before you the information I have had concerning them.

“*Gentlemen of the Assembly,*

“The season of the year will naturally lead you to make provision for the support of his Majesty’s government.

“*Gentlemen of the Council and General Assembly,*

“I assure you, that whatever bills you shall agree on for the benefit of this province, consistent with my duty to pass, shall most readily have my assent.”

#### THE ADDRESS.

“We, his Majesty’s dutiful and loyal subjects, the General Assembly of the colony of New-York, return your excellency our thanks for your speech.

“The concern your excellency expresses for the trade and welfare of this colony, demonstrates your excellency’s care for the public good, and it cannot but be extremely pleasing to every one who has his country’s interest sincerely at heart. The advanced season of the year, the difficulties of attending the public service at this place, and the dangers which such members who have not had the small-pox apprehend themselves even here to be exposed to, all concur to induce us to postpone the consideration of every matter, not immediately necessary to be provided for, and shall do therein what shall be for his Majesty’s service and the welfare of this colony.”

He suppressed any remarks on the novel omission

of a previous copy, and, three days after, called them to hear this

ANSWER.

*“Gentlemen of the General Assembly,*

“I return you my thanks for this obliging address, and the assurances therein given me; and as soon as you shall have made provision for the immediate and necessary service of the province, I shall readily grant you a recess as you desire.”

They sat only to the 11th of November, and having voted to provide at the next meeting for repairing the fortifications, the establishment of a College, and the usual presents for the Indians, and other Indian affairs, he passed their bills, and, among the rest, the duty bill, and for issuing out of that fund the salaries of the officers to the first of September 1753.

It may gratify the curiosity of the reader to know, that of the members of this Assembly Mr. Chief Justice Delancey was nephew to Colonel Beekman, brother to Peter Delancey, brother-in-law to John Watts, cousin to Philip Verplanck and John Baptist Van Rensselaer; that Mr. Jones the speaker, Mr. Richard, Mr. Walton, Mr. Cruger, Mr. Philipse, Mr. Winner, and Mr. Le Count, were of his most intimate acquaintances; and that these twelve, of the twenty-seven which composed the whole House, held his character and sentiments in the highest esteem. Of the remaining fifteen he only wanted one to gain a majority under his influence, than which nothing was more certain; for, except Mr. Livingston, who represented his own manor, there was not among the rest a man of education or abilities qualified for the station they were in. They were, in general, farmers, and directed by one or more of the twelve members above named—Mr. Dowe, by his colleagues Mr. Winner and Mr. Rensselaer—Mr. Thomas, by his brother-in-law the Speaker and his colleague Mr. Philipse—Mills, by Mr. Watts and his cousin-german Mr. Nicoll—Cornel. by his colleague Mr. Jones—Mr. Lot and Mr. Vande-

vier, Mr. Junton and Mr. Dupue, by all the city members\*—Mr. Walton of Staten Island, by his cousin a New-York member, and his colleague Mr. Le Count—Mr. Filkin, by Colonel Beekman, whose interest brought him in—Mr. Snediker and Mr. Samuel Gale, by the members for the capital—and Mr. Mynderse of Schenectady, by Mr. Winner and Mr. Rensselaer. Of the whole House, the only wealthy able member, neither connected with Mr. Delancey nor in the sphere of his influence, was Mr. Livingston.

His station on the bench, with the independent tenure of good behaviour, added to his amazing power, which was again augmented by the inferior abilities of his assistants and his incessant assiduity, joined to his own affluence and that of his family, in cultivating all the arts of popularity from the moment he was disgusted by Mr. Clarke in the year 1737. Nor was he without dependants even in the Council, though by the death of some weak men introduced by his interest, the suspension of Mr. Horsmanden who ventured too deeply in measures against Mr. Clinton, and the introduction of Mr. Rutherford, Mr. Holland, and Colonel Johnson, he had lately lost ground at that board; but, not many years afterwards, he found means to regain and almost engross the whole sway in the executive department.

To him, therefore, who barely considers the inveterate animosity between this demagogue and the King's Governor, such a session as the last may appear not a little mysterious. The truth is, that he began to be fearful of having overacted his part. It was clear, from the success of Mr. Clinton's recommendations to office, that the representation preparing by the Lord's of Trade, could not be favorable to the party that opposed him; and besides, the hints dropped by Mr. Chief Justice Morris and others in England, of meditated vengeance, corresponded with the intimations from Mr. Charles; and many persons

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\* Messrs. Richard, Cruger, Watts, and Walton.

had ventured to predict, that the heated councils by which the Assembly had been so long led, would end in the ruin of the province. The agent had informed the speaker, by a letter of the 30th of May, 1751, "that the report touching the state of this colony, was at last transmitted from the Board of Trade to the King in Council." He adds: "It is said to be very long and particular, and to consist of a quire of paper, with two quires more by way of appendix, whereof I can have no copy, till it is read in Council and referred to a committee, when I shall move for a copy, to be transmitted to the General Assembly for their instructions thereupon. The affair of the Jersey line remains yet unproceeded upon." On the 22d of June following, he sent a copy of the act to regulate and restrain paper money in the four New England colonies, carried through by the patronage of the Board of Trade, with a disagreeable prognostication, that it appeared to him "to be a prelude to a total abolition of paper credit in the colonies; for, as what is allowed to be issued even on the greatest emergencies, is not a legal tender between man and man, I apprehend the conveniency and utility of it is quite taken away." He then adds: "The representation touching the state of your province, has not yet been read in Council, owing possibly to some late changes in the ministry, the Earl of Granville being declared President of the Council, and the Earl of Holderness Secretary for the Southern Department, in which America is included. I will carefully watch its progress, and acquaint you therewith." His letter of the 29th of July following, has this clause: "I am in constant expectation of hearing that the representation touching the state of your colony, will be taken into consideration; upon which subject, I am sorry to say that, as far as I can learn, it contains volumes of paper, of which I am denied a sight, and can yet have no copy. Several rights and privileges claimed by the General Assemblies of your colony, of which they have been many years in possession, are struck out; and complaints are made of *particular persons*,

which I was in hopes had long ago been dropped. I heartily wish the whole of this matter may not discompose the peace and tranquillity which had an appearance of being re-established in the colony. The affair of the Jersey line is not yet proceeded upon; for carrying on which, I have received the remittance of one hundred pounds, mentioned in your letter. I have now only to add, that I understand a commission lies prepared at the Secretary of State's Office, appointing Robert Hunter Morris, Esq. to be *Lieutenant Governor* of New-York." His letter of the 10th of August is this: "I am to acquaint you, that on the 6th instant, the Lords of the Committee of his Majesty's Most Honorable Privy Council, entered upon the consideration of the reports of the Commissioners for Trade and Plantations, touching the state and condition of the colony of New-York, and referred the same, as I am informed, for further consideration. Having repeatedly applied to know whether, as agent of the colony, I might obtain a copy of this report, and of the papers accompanying it, (both which are very long,) and being given to understand there were orders against giving any copy, and that the matter would be taken up and considered as an affair of state, I believed it my duty to take the earliest opportunity of renewing that application. As soon as the report was read, I therefore wrote a letter to the Secretary of the Council, which he did me the favor to lay before their Lordships of the Committee, who, as I am informed, not having yet resolved whether they will allow a public hearing on the subject matter of the report, and a copy of it being yet denied me, I must remain contented to watch its progress, and to take their Lordships' pleasure. If their Lordships proceed herein as a Council of State only, it will be from the orders and instructions that may be issued, that your colony will be able to judge of the principal points of the report: and if the regulations proposed do sensibly affect your colony, you will no doubt thereupon make such humble representations to the Crown as you shall judge necessary,

which must bring the whole at last to an open and public discussion. Mr. Morris's commission to be Lieutenant Governor of your colony, lies yet incomplete." On the 4th of May, 1752, he writes thus: "The further consideration of the report of the Board of Trade, touching the state of your colony, has not been resumed in Council since August last; and I am still not permitted to have any copy or extract of it, though I continue in hopes that their Lordships of the Privy Council will not come to any resolution thereupon, without hearing the parties that may be affected by it. Being thus deprived of the means of informing the House with certainty, in points that may be of great consequence, I can only, under these circumstances, take measures for their service as opportunities are given me, of which I will not fail to make the amplest use in the discharge of my duty. Nothing material is yet done in the affair of the boundary line between your colony and New-Jersey. The intended commission to Mr. Morris as Lieutenant Governor, is quite laid aside. I cannot conclude, without expressing my sincere wishes that a good understanding may be restored between the several branches of your Legislature, and may subsist, for the general welfare and tranquillity of the colony."

In this precarious situation of affairs, it could not subserve Mr. Delancey's popular interest to increase the indignation of government against the colony, the numerous families whose estates were affected by the Jersey claims, growing extremely jealous of any further broils between the Assembly and the Governor. Those contests besides, were inauspicious to the success of his designs of obtaining the Lieutenant Governor's place, by which he hoped to find an escape for himself and his friends, if Mr. Colden took the command of the colony as President of the Council, an event which he could not turn his eye to without horror. It was therefore expedient, while Mr. Delancey's friends were negotiating in England for the gratification of his ambition, to suspend hostilities against Mr. Clinton: and the reader now has the new

key to the seeming inattention of the Assembly to that part of the Governor's speech in October 1751, requiring their conformity to his commission and instructions to the Governor's courage in the last dissolution, and the subsequent pusillanimity of the new Assembly during the rest of his administration.

Mr. Clinton furnished a fresh proof of the stability of his interest at Court, by introducing a new member into the Council. He had procured the royal mandamus for Mr. Smith, in preference to Colonel Morris, for whom some solicitations were made by his brother, then in England, and before Mr. Oliver De-lancey, whose sister was the lady of Sir Peter Warren. Mr. Smith was sworn in on the 30th of April, 1753. The Assembly was convened a month afterwards, at Jamaica, the capital being not yet free from the contagion of the small-pox.

The speech proposes a revision of the colony laws, and the framing and passing a new digest, according to a model executed in Virginia, and now recommended to our imitation by the Lords Justices and the Board of Trade, to which some embarrassments in the researches for compiling the late representation in the latter, had probably given rise.

He assigns the true reason of meeting them at an unusual place; declares it to be by the advice of the Council, and in tenderness to the House; professes his confidence in their honor and justice, for a due attention to the state of the Indian alliance, the repair of the northern fortifications, and the discharge of the colony debts; applauds their late resolution to promote the arts and sciences, by establishing a seminary of learning, as worthy their diligent prosecution and most serious attention; informs them of the intrusions upon the colony by our neighbors; suggests the expediency of concerting measures respecting them, by a committee both of the Council and Assembly; and promises readily and heartily to join with them in promoting the happiness of the colony.

The Assembly thanked him; hoped that the new code of colony laws, then just published, would not

be disapproved by the King ; testified their gratitude for his regard to their safety in the convention at Jamaica ; and promised an immediate attention to matters laid before them. Not a single instance of the want of harmony now appeared.

A committee of both Houses met on the New England intrusions, and a bill was passed, for appointing Commissioners to prepare representations upon them to the King's Ministers ; a further sum was raised by lottery for the college ; the colony debts discharged, and every message received and attended to ; money voted for fortifications ; large sums given for presents to the Indians ; the critical state of their friendship confessed ; and the Governor implored, by an address, to visit and treat with them. Mr. Clinton being indisposed, condescended to propose a treaty by commission, and to authorize such persons for this trust, as the Council and Assembly might nominate and recommend to him : and Colonel Johnson, such was the policy of the House, became the sole distributor of the presents, and the confidant of both Houses.

To such as knew the offence taken at Mr. Clinton's patronage of this gentleman, and the obstacles raised to avoid the payment of his demands, it afforded no small surprise to see a joint address of both Houses, signed James Delancey and David Jones, requesting a treaty for appeasing the ill temper of the Indians, and declaring it to be the opinion both of the Council and Assembly, "that Colonel Johnson is the most proper person to be appointed to do this service ; and we humbly hope your Excellency will *commissionate* him."

Towards the close of the session, which ended the 4th of July, and the last in Mr. Clinton's administration, he revealed the secret of his daily expectation of a successor, and his intention to return to England. It was extracted by their importunity for his making a journey to assuage the Indians.

The Commissioners appointed for defending the colony against the encroachments of Massachusetts

Bay\* and New-Hampshire, were all members of the Assembly; viz. David Jones, John Thomas, Paul Richards, William Walton, Henry Cruger, and John Watts; and though the object of that act was a very important one, yet very little advantage was derived from it.

The rise of the controversy with New-Hampshire was this:—Before the year 1741, that colony was considered as the tract granted to Mason and Gorges, and extending only sixty miles from the sea-coast, did not by many miles reach the river Connecticut. The commission to Mr. Benning Wentworth, Governor of it, issued in that year, and declared his province to extend westward and northward, “until it meets with his Majesty’s other provinces.”

On the peace of Aix-la-Chapelle in 1748, that Governor conceived the design of extending his jurisdiction westward to twenty miles from Hudson’s River, because New-York had agreed with Connecticut to such a boundary on the east; and Massachusetts had of late years intruded so far upon certain old patents of this province, extending to thirty miles east from that river.

The country in the north-eastern corner of this colony was, before the late war, almost entirely unknown, and so exposed to the incursions of the enemy, especially after the erection of the fort at Crown Point in 1731, that it contained scarce a single inhabitant when Mr. Wentworth began to grant it as a part of the province of New-Hampshire, in 1749. Then the quarrel arose. New-York insisted upon Connecticut River as her eastern boundary; and after several letters had passed between Mr. Clinton and that Governor, it was agreed in July 1750, to state their claims, exchange copies of their representations, and submit to the royal decision, it being understood that all intermediate grants should be suspended.

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\* In the first volume of this work, is inserted the report of the Council in March 1753, on the pretensions of Massachusetts Bay.

Mr. Wentworth, whose narrow views prompted him to greater activity, stated his claim, and despatched it, in a letter of the 23d of March, 1750, without the least previous intimation to the Governor of New-York; and soon after, multiplied grants of the controverted territory under the seal of New-Hampshire. This precipitation, which, by pressing private interest into the maintenance of a point that might have been otherwise settled without difficulty, is the true origin of those disorders in that quarter of the country. New-York afterwards exhibited its title, when advised by the agent of the clandestine conduct of New-Hampshire; and to support it, and repress the incursions of Mr. Wentworth's patentees, was one of the objects Mr. Clinton had in view at the last meeting of his Assembly. Nor could he omit the notification; for the agent, upon the receipt of an extract from Mr. Wentworth's letter to the Lords of Trade, from the Secretary to that Board, who had procured time to consult his constituents, on the 18th of February, 1753, wrote both to the Governor and the speaker, and enclosed copies of the New-Hampshire application for running out the line he had set up for a partition between the two colonies. The sequel will show how much the unseasonable neglect of the rights of the colony at this juncture, was afterwards to be regretted.

## CHAPTER III.

*From the resignation of Governor Clinton, to the appointment of Sir Danvers Osborn as Governor.*

MR. CLINTON was at Flushing, in Queen's County, where he had resided the whole summer, when Sir Danvers Osborn\* arrived to succeed him in the command, which was on Sunday, the 7th of October, 1753. He was met at Whitehall by the Council, Mayor and Corporation, and chief citizens, and attended to the Council Chamber; and, in the absence of Mr. Clinton, took up his lodging at Mr. Murray's, whose wife was a daughter of Governor Cosby, and a distant relation of Sir Danvers's deceased lady, a sister to the Earl of Halifax. Mr. Clinton waited upon him the next day, and they both dined at an entertainment provided by the Council. On Wednesday morning they assembled the Council at the Fort, for administering the oaths, and then began the usual procession for reading the commission at the Town Hall. The indecent acclamations of the populace, stimulated by the partizans of the late troubles, induced the old Governor to take leave of his successor at a short distance from the Fort, while Sir Danvers stalked along with the Council and Magistrates, rather serious than cheerful, amidst the noisy shouts of a crowded throng.

After his return to the Council Chamber, he received the address of the City Corporation, of which he had a copy, and with difficulty restrained his intention of begging the alteration of a passage in it, which he thought expressive of jealousy. The words were:

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\* Mr. Charles, in his letter of the 11th of June, 1753, informed the speaker, that Sir Danvers was "a gentleman of great worth, a Member of Parliament for Bedfordshire, and brother-in-law to the Earl of Halifax."

"We are sufficiently assured that your Excellency will be as averse from countenancing, as we from brooking, any infringements of our inestimable liberties, civil and religious."

These particulars are mentioned with the more minuteness, on account of the tragical end to which this unfortunate gentleman was approaching.

He told Mr. Clinton, with disapprobation of the party exultations in his progress to and return from the town-hall, "that he expected the like treatment before he left the government."

While at a splendid dinner, given to the two Governors and the Council by the Corporation, there was every demonstration of joy. The city was illuminated, cannon were discharged, and two bonfires lighted up on the common, in the evening. Sir Danvers took no part in the general joy. He retired early in the afternoon, and continued at his lodgings, while the whole town seemed abandoned to every excess of riot. The last act of Mr. Clinton's administration was the delivery to Mr. Delancey of a commission to be Lieutenant Governor. This had been done in the presence of the Council, immediately after he gave the seals to Sir Danvers, and it contributed much, with the discovery now made of Mr. Clinton's letter to the Lords of Trade respecting the Jersey claim,\* to the mad transports of the populace in the streets and commons.

Sir Danvers rose early on Thursday morning, and before the family were about, had, alone, patrolled

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\* It was divulged at one of the hearings, on the 29th of May and 5th of June, before the Board of Trade, after the objections by Mr. Forrester and Mr. Pratt (since the celebrated Lord Camden) to the Jersey act, and to show, that the Crown had, except some trifling quit-rents, no interest in the controversy. The contents of the agent's letter of the 12th of June, with the history of those debates, were now publicly retailed, and exasperated the New-York landholders near the contested line, for the bounds and reservations of their patents had been authenticated under Mr. Alexander's oath, with information concerning their vast extent, to make unfavorable impressions, as Mr. Clarke expresses it, upon the minds of the Lords of Trade; "which (says he) may possibly remain." The author transcribed the report, of which Mr. Pratt was the penman, in the former volume, on which the Jersey act was repealed by the King.

the markets and a great part of the town. He complained of being somewhat indisposed ; and at dinner said, with a smile to Mr. Delancey, " I believe I shall soon leave you the government. I find myself unable to support the burden of it." He had convened the Council in the forenoon, and appeared in some perturbation at their first assembly, especially when he found that Mr. Pownal, who had the key of his cabinet, was not within. He was desirous to show them his instructions. He informed them, that he was strictly enjoined to insist upon the permanent indefinite support of government, and desired their opinions upon the prospect of success. There was a general declaration, that the Assembly could not be brought to adopt that scheme. With a distressed countenance, and in a plaintive voice, he addressed Mr. Smith who had not yet spoke a word—" What, sir, is your opinion ?"—and when he heard a similar answer, he sighed, turned about, reclined against the window-frame, and exclaimed, " then what am I come here for ?"

In the evening he had a physician with him, talked of ill health, was disconsolate, and retired to his chamber, and at midnight dismissed his servant. While the house was preserved the next morning in the utmost silence, upon an apprehension that he was still asleep, an account was brought that he was hanging dead against the fence at the lower end of the garden. A vein was opened, but to no purpose.

The malevolence of party rage would not, at first, ascribe this event to the insanity of the deceased ; but threw out insinuations, that he had been brought to his end by foul means, and that the criminals were some of those who could not suppress their joy to see Mr. Clinton a private character and Mr. Delancey at the helm ; nor did these unjust suspicions soon subside.

The Council were immediately summoned to Mr. Murray's house, where the tragedy was acted, and every circumstance inquired into, for the satisfaction both of his relations and the Crown, and the vindica-

tion of the party led by the new Lieutenant Governor to such lengths against Mr. Clinton, who was then preparing for his voyage.

On the top of the fence was a row of large nails, inverted, to exclude thieves from the garden, over which he had cast a silk handkerchief tied at the opposite ends, and had elevated his neck to it by a small board, which was found near him over his hat upon the ground.

After his servant left him he had consumed a vast number of private but no public papers, endorsed others, which he preserved; wrapped up a sum of money, borrowed since his arrival, and directed it to the lender. There was lying on his table a paper, written in his own hand, *quem deus vult perdere, prius dementat*, and the Coroner's inquest believed his testimony, for they found him a lunatic.

A man, who before the light of that day passed the river in a boat under the fence, heard the noise of his heels against it in his last struggles. But Mr. Pownal's testimony surmounted every obstacle in the minds of all persons of candor. This gentleman (since so well known in the characters of Lieutenant Governor of New-Jersey, assistant to the Earl of Loudoun in the war of 1756, Governor of Massachusetts Bay, Commissary in Germany, and a member of the British Parliament) came out as a guide and assistant to Sir Danvers Osborn, and revealed the secret, that the Baronet had been melancholy ever since the loss of his lady, whom he most passionately admired, and that he had before attempted his own life with a razor; adding, that Lord Halifax, by whose interest he obtained the government, had hopes that an honorable and active station abroad might have detached him from the constant object of his anxious attention. As it may be interesting to know every thing relating to this unfortunate gentleman, and as Mr. Smith was at that time one of the Council, and under no bias to the party calumniated at his death, and his diary kept with such secrecy that none of his children ever knew, in his life-time, that he had one,

for the sake of truth these passages are inserted, that the most scrupulous may be satisfied.

“ *Wednesday, 10th October, 1753.*

“ Sir Danvers Osborn published his commission, took the usual state oaths and that relating to trade, and received the seals from the hands of Governor Clinton, who then (pursuant to an order from the Duke of Newcastle to deliver the commission of Lieutenant Governor, before his Excellency left the government, to James Delancey, Esquire,) delivered the same in Council accordingly, and Sir Danvers took the oath of Governor and Chancellor, or Keeper of the Great Seal. The commission was afterwards published at the City-Hall. The Corporation treated the new Governor and Council at Burns’s; and the whole was conducted and the day and evening spent with excessive shoutings; two bonfires, illuminations, ringing of the church bells in the city, drunkenness, and other excessive demonstrations of joy.

“ *Thursday, 11th October.*

“ Sir Danvers appeared very uneasy in Council.

“ *Friday, 12th October.*

“ Alarmed by the door-keeper of the Council about eight o’clock, desiring me to come to Mr. Murray’s, saying, ‘*the Governor had hanged himself.*’ Went, and found it awfully true. He had been found in Mr. Murray’s garden hanging in his handkerchief fastened to the nails at the top of the fence. On the first discovery, his body was found quite cold, and upon two incisions no blood issued. He was brought into the house and laid on the bedstead, where I saw him, a woful spectacle of human frailty and of the wretchedness of man, when left to himself. The Council went from Mr. Murray’s to the fort, where Chief Justice Delancey published his commission, and took the oaths in our presence, and received the commission of Sir Danvers and seals and instructions, by order of Council, from Thomas Pownal, Esq.; but took not

the oath of Chancellor, lest it might supersede his commission of Chief Justice, till this point be considered. His commission, after it was read in Council, was published only before the fort gate, without any parade or show, because of the melancholy event of this day.

“The character of Sir Danvers Osborn, Baronet, of Chicksands in the county of Bedford, as far as I could observe, having been every day since his arrival with him, was this—he was a man of good sense, great modesty, and of a genteel and courteous behavior. He appeared very cautious in the wording of the oaths, particularly for observing the laws of trade enjoined by the statute of 7th and 8th William III. He appeared a very conscientious man to all the Council in that particular. A point of honor and duty, in a *foreseen* difficulty to reconcile his conduct with his Majesty's instructions, very probably gave his heart a fatal stab, and produced that terrible disorder in his mind which occasioned his laying violent hands on himself.

“He was found between seven and eight in the morning hanging about eighteen inches from the ground, and had been probably some hours dead. His Secretary told me, this morning, he had often said to him, he *wished he was Governor in his stead*. He or somebody else desired me to observe the ashes in the chimney of his bed-room, as being necessary to be observed to excuse *his* producing of any papers that might be expected to be produced by him, and he showed me two pocket-books in which there was nothing remaining. He said, that when the copy of the Episcopal Church address was shown yesterday, he observed to Sir Danvers, that he would have an opportunity here, by going to church, to act according to his own mind, and that he (the Secretary) with the gentlemen should wait on him. To which (says Mr. Pownal) he gave me this shocking answer, ‘*you may, but I shall go to my grave.*’

“A committee of Mr. Alexander, Mr. Chambers, and the Mayor, are appointed to take depositions

concerning the facts and circumstances attending his death. The jury have found Sir Danvers (as is said) non compos mentis. Mr. Barclay\* was sent for into Council to desire him to read the burial service. He objected, as the letter of the rubric forbids the reading it over any that lay violent hands on themselves. Agreed in Council, that the meaning ought to be regarded more than the words. I said, qui hæret in litere, hæret in cortice, and if the jury on inquest found Sir Danvers non compos, his corpse had as much right to Christian burial as the corpse of a man who had died in a high fever. This seemed to satisfy Mr. Barclay coming from me, seeming with more of his regard, than if it had come from another.† He said, he had not any scruples of conscience, but he desired to avoid censure, as we have people of different opinions amongst us.

“ *Sabbath, 14th October, 1753.*

“ Last evening attended the funeral of Sir Danvers Osborn, as a bearer, with five others of the Council and Mr. Justice Horsmanden and Mr. Attorney General; and this day, in the old English Church, heard a sermon from Hebr. 10th chap. 24th verse—*‘and let us consider one another, to provoke unto love and to good works.’* ”

Mr. Clinton had no sooner given up the reins than he retired to the west end of Long Island, from whence he embarked, but not till he had suffered the keenest mortification under the late unexpected vicissitudes; for he not only heard himself execrated, and saw his enemy advanced and applauded, but was a witness to the ungrateful desertions of some of

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\* This gentleman, who served as a Missionary to the Mohawks, was, on the death of Mr. Vesey in 1746, called to be Rector of Trinity Church in the metropolis. His arrears of 20 pounds were provided for in the support bill of that year, and there has been no provincial allowance since that time towards the propagation of Christianity among the Indians.

† Mr. Smith was a member of the Presbyterian congregation in communion with the Church of Scotland.

those he had raised and obliged. He had, nevertheless, the spirit to reject some insidious advancements made by Mr. Delancey towards a reconciliation; and thus parting foes, that artful politician who could not win him by blandishment, resolved to parry his resentments and enervate his testimony, by loading him with disgrace. Thus he cut him out work when he arrived in England for the defence of himself. He sailed in the *Arundel* about the beginning of November. Easy in his temper, but incapable of business, he was always obliged to rely upon some favorite. In a province given to hospitality, he erred by immuring himself in the fort, or retiring to a grotto in the country, where his time was spent with his bottle and a little trifling circle, who played billiards with his lady and lived upon his bounty. His manner of living was the very reverse of that requisite to raise a party or make friends. He was seldom abroad; many of the citizens never saw him; he did not even attend divine worship above three or four times during his whole administration. His capital error was gratifying Mr. Delancey with a commission, which rendered him independent and assuming, and then reposing equal confidence in Colden, who was interested in procuring his recall, or rendering the country his abhorrence. He saw that event, and, to prepare for it, ventured upon measures that exposed him to censure. Mrs. Clinton prompted her husband, whose good nature gave place to her superior understanding, to every plausible device for enhancing the profits of his government. He sometimes took money for offices, and sold even the reversions of such that were merely ministerial. He set the precedent for the high fees since demanded for land patents, and boldly relied upon the interest of his patrons to screen him from reprehension. He became afterwards Governor of Greenwich Hospital. It was a shrewd observation made by Col. Choat to the author, at Sheffield, in May 1755, on the controversy line between this colony and the Massachusetts Bay, that Mr. Clinton was of all others the man we should have

wished for our Governor; for *his* bottle and a present, he would have granted you every thing within the sphere of his commission; but by joining Delancey, you became the dupes of private ambition, and brought your colony, through the Newcastle interest, into disgrace with the Crown. Mr. Clinton's accounts for expenditures, in consequence of the Duke's orders of 1746, amounted to eighty-four thousand pounds sterling; and it was supposed that the Governor returned to England with a fortune very little short of that sum.

The ambition and strife of Colden and Delancey gave rise to the new instruction, which arrived here without any previous intimation, for the ministry had eluded the vigilance of the agent, who so late as the 11th of June informed the speaker, that the representations of the Lords of Trade, on which it was undoubtedly founded, was still unproceeded upon in Council.

The thirty-ninth article recited, that great disputes had subsisted between the several branches of the legislature, the peace of the province had been disturbed, government subverted, justice obstructed, and the prerogative trampled upon; that the Assembly had refused to comply with the commission and instructions respecting money raised for the supply and support of government, had assumed the disposal of public money, the nomination of officers, and the direction of the militia and other troops; that some of the Council, contrary to their duty, allegiance, and trust, had concurred with them in these unwarrantable measures; and, therefore, it enjoined the Commander-in-chief, to endeavor to quiet the minds of the people, to call the Council and Assembly together, and in the strongest and most solemn manner to declare the King's high displeasure for their neglect and contempt, to exact due obedience, to recede from all encroachments, to demean themselves peaceably, to consider without delay of a proper law for a *permanent revenue, solid, indefinite, and without limitation*, giving salaries to all Governors, Judges, Justices,

and other necessary officers and ministers of government, for erecting and repairing fortifications, annual presents to the Indians and the expense attending them; "and, in general, for all such other charges of government as may be fixed or ascertained." It then permits temporary laws for temporary services, expiring when these shall cease; but such laws, also, are to be consistent with the prerogative royal, the commission, and instructions. It also directs, that all money raised for the supply and support of government, or for temporary emergencies, be applied to the services for which it was raised, no otherwise than by the Governor's warrant, with the advice and consent of the Council; not allowing the Assembly to examine any accounts; and afterwards it commands, that if any Counsellor, or other Crown officer in a place of trust or profit, shall assent, advise, or concur with the Assembly for lessening the prerogative, or raising or disposing money in any other method, the Governor shall suspend the offender and report it to the Board of Trade. By the 47th, the Governor was prohibited from assenting to a law whereby any gift was made to him by the Assembly, in any other manner than above mentioned. 48th, allowed him to take a salary of twelve hundred pounds sterling per annum. 49th, to receive a further sum, provided it be settled on himself and his successors, or during the *whole* of his administration, and that within a year after his arrival. 50th, required the three last to be communicated to the Assembly at the first meeting of the Assembly after Sir Danvers Osborn's arrival, and to be entered in the registers both of the Council and Assembly.

Upon the supposition that the Council and Assembly would obstinately resist the execution of these commands, of which Sir Danvers Osborn could not doubt, he must have perceived that his administration would not only prove destructive to his private fortune, but draw upon him the general odium of the country, and excite tumults dangerous to his personal safety.

The Council at this period were—

Messrs. Colden,	Messrs. Rutherford,
Alexander,	Holland,
Kennedy,	Johnson,
Delancey,	Chambers,
Clarke, Junior,	Smith.
Murray,	

Of these Mr. Alexander and Mr. Smith, as the original projectors of the modern scheme of an annual support, and Mr. Delancey and Mr. Murray, as the subsequent fautors of that measure, and Mr. Justice Chambers, who held his office, as well as the Chief Justice, during good behavior, must have immediately lost their places at the Council Board: and Mr. Secretary Clarke residing in England, the Governor's reliance in that branch of the Legislature could only have extended to Mr. Colden, Mr. Kennedy, the Collector of the Customs and Receiver General of the royal rents, Mr. Rutherford, a Captain of one of the independent companies, Mr. Holland, Mayor of the capital, Mr. Johnson, then Colonel of the militia and residing in the Indian country: nor was it certain that even those four last mentioned would have preferred their offices to their patriotism and the abhorrence of the multitude: and when the sanction for infusing obedience came to be applied to the Assembly, the tumult would extend, not only to the deploing of nine of the twenty-seven from their rank in the militia, but many others, who were Judges and Justices of the inferior courts; to say nothing of their relations and friends and other public officers, in a variety of stations, in all parts of the province, who might interfere in supporting them, and fall under the character of their advisers. Besides, it was imagined by some, that the instruction was designed for the removal also of the Judges, and to bring the question to a trial—whether Mr. Clinton had authority to give them freeholds in their places?—a point of law ultimately cognizable before his Majesty in Privy Council; and because attended with dangerous consequences, not improbably one of the mo-

tives of administration in raising Mr. Delancey to the place of Lieutenant Governor, that the ambition of the demagogue might be pre-engaged into the service and aims of the ministry.

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#### CHAPTER IV.

*From the Death of Sir Danvers Osborn to the accession of Lieutenant Governor Delancey.*

BUT the death of Sir Danvers Osborn dispelled the impending storm; and Dr. Colden who had retired to the country in disgust, cheated by his friends and disappointed by the administration, and whose only consolation, under the scoff of his enemies and the general contempt of the people, was the vain belief that he had spread a net to entangle his old rival, was soon after doubly mortified to see him elude it by his craft, and the deep laid plan itself vanish like a bubble.

Mr. Delancey's path was a plain one. He must, indeed, resign the hope of a salary for one or perhaps two or three years, but the arrears would not be lost, if he could save his station. He had to preserve that Assembly—rebuke them publicly, for not obeying the instructions—and privately confederate with them, not only to remonstrate against them, but to impeach Mr. Clinton and blunt the edge of his accusations. And while this farce was acting, he had nothing to dread from the Council, none of them approving while others were averse from the indefinite support; Mr. Colden excepted, who became irreconcilable to the late Governor by the private scheme to exalt Mr. Morris, and therefore not disposed, nor, by his retreat, in a situation, if willing, to tell any thing on the other side of the water, for the gratification of Mr. Clinton's revenge.

When Mr. Delancey had been sufficiently regaled by the incense of the most fulsome adulation, promoted by his friends, from all ranks and classes, to preserve his popularity on one side of the water, and render it useful to him and his party on both, he convened the Assembly, and on the 31st of October, before Mr. Clinton's departure, made a speech, lamenting the death of Sir Danvers as a public loss, because he had birth, a liberal education, and a distinguished character; communicated a copy of the obnoxious instructions, that they might thus be informed of his Majesty's displeasure; asked provision for repairing the city fortifications and the trading house at Oswego; recommended the preservation of the Indian alliance; condemned the farming of the excise; advised to train the people to arms, by a well regulated militia law;\* applauded the late act for inspecting flour; urged to the prevention of frauds, in the exportation of beef, pork, and other commodities; and to give appearance of zeal at court, earnestly pressed it upon them, to frame their bills for supporting the government in such a manner as the royal instructions required; observing, very sagaciously indeed, "that by our excellent constitution the executive power is lodged in the Crown," but unfairly adding, (since, as a lawyer, he knew his doctrine asserted in general terms to be unsound) that the legal course for abuses of power was by application to the Crown; which was an abuse of their confidence, public officers being in many instances indictable by a grand jury, and that the annual support had been substituted in this province, to supply the wants of relief in some cases, for which the laws of England prescribe an impeachment.

The Assembly, after condoling the death of the late Governor, exult in the succession by a person of his

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\* A militia law is generally favored both by Governors and the Assembly, as it serves the latter in elections, and the former by gratifying the members at whose instapce the militia officers are ordinarily appointed.

known abilities and just principles, and declare themselves extremely surprised to find the colony had been so maliciously misrepresented; they boast of their attachment to the Crown; are at a loss for instances of disorder, except in the obstruction or perversion of public justice by Mr. Clinton's orders, to stop the course of the law in Dutchess county—his appointing Judges and justices of ill fame and extreme ignorance, one prosecuted for perjury whom he *rewarded*, they say, with the office of Assistant Judge, and others who were so illiterate as not to be able to write their names; that instead of assuming the direction of the militia, they had declined meddling with it; they had not the most distant thought of injuring the just prerogatives of the Crown; that the present mode of raising and issuing public money had been practised for sixteen years, and they hoped for his assent to bills according to the usual course; that nothing should be wanting to promote the King's service and render his administration easy and happy.

He echoes back their testimony in favor of the loyalty of the people, having, in riding the circuits for twenty years, observed not an instance of disaffection, and promises to remove such officers as they complain of; but, with respect to his assent to their bills, he engages his concurrence, if they are framed in such a manner as his Majesty expects.

They proceeded to a variety of acts, in the fullest confidence of their being passed; and, for form sake, among the rest sent up the annual support bill to the Council, and stimulated them for information concerning its progress, but were answered immediately that it was rejected.\*

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\* On the 29th November, twelve days before the Council's negative, Mr. Jones writes to the agent: "You will doubtless, before this reaches you, hear of the sudden and surprising death of Sir Danvers Osborn, and of the government's being thereby devolved on Mr. Delancey, our Chief Justice. Under this administration we conceived great hopes, that all former disputes would have subsided; but, unluckily for this unhappy colony, the instructions Sir Danvers brought with him, with respect to the issuing bills for raising and issuing public money, are such, that, I think, no General

He had every proof of their willingness to oblige him. Upon a message, with Lord Holderness's letter, advising of an intended encroachment of the French and Indians, they resolved to assist the neighboring colonies; to resist force by force, in case of any invasion; carried on sham process for punishing a printer, who had republished in a newspaper that part of their journals containing the thirty-ninth instruction, only the substance of which he was ordered to reveal. They also voted him a salary of fifteen hundred and sixty pounds, a larger sum than ever was given to any former Lieutenant Governor, and equal to Mr. Clinton's allowance; eight hundred pounds more for Indian presents; one hundred and fifty pounds for his voyage to Albany; four hundred pounds for fuel and lights to the garrison; his arrears as chief justice to the 12th of October; and after the rejection of the support bill, bound themselves for the expenses of his voyage and the presents he might distribute to the Indians. While the Lieutenant Governor, on the other hand, conspired with them in appointing counsel to defend a quantity of powder in the province stores, seized by Mr. Kennedy, who was a friend to the late Governor, and struck at for seizing it as contraband; passed fifteen popular laws, and continued the session till they had perfected a complaint to the King, and a representation to the Lords of Trade, against Mr. Clinton; tenderly remarking before they parted, that they "must be sensible they had not acted in compliance with his Majesty's ROYAL instructions;" and "that he hoped, after consulting their constituents, they would, at their next meeting, bring with them such dispositions as would effectually promote the public service, and then proceed with a due regard to what his Majesty

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Assembly will comply with them; and, therefore, I apprehend that no law will be passed for the application of public money this session, nor Governor or Council recede without permission."

justly expected from them, and thereby recommend themselves to his royal grace and favor."

The address is a short declaration to the King of their abhorrence of those groundless imputations of disloyalty, most falsely and maliciously "reported to him." "Surely none but men destitute of justice, honor, and veracity, would represent us in a light so distant from truth." It concludes with warm professions of loyalty and affection, roundly affirming, "that there is not a native of the colony who would not cheerfully hazard his life, fortune, and all that is dear to him in the defence of his person, family, and government." But their complaint to the Plantation office is a verbose, angry attack upon the late Governor, and is so artless and unguarded as to reproach their Lordships by their representation to the King.

Relative to the late disputes, they assert, that they arose from the mal-administration of Mr. Clinton, who had maligned the colony to escape the censure himself deserved; it incautiously alleges, that, during Mr. Clarke's time, the peace of the colony was undisturbed, no discord between the branches of the Legislature, no accusations of the Assembly's assuming the executive or trampling upon the prerogative; that there were no animosities in the first three years of Mr. Clinton's administration, though the public measures were then what they had been since. They then offer to prove—that Mr. Clinton was interested in privateers, and hired out the cannon given by the King for the use of the colony; that Saratoga was lost by his withdrawing the troops to gain benefits by his independent company, and to the loss of the lives of many others of the King's subjects; that he was the cause of the Indian disaffection, by embezzling a great proportion of the presents raised to secure their friendship; that he demanded subsistence and provisions for two Indian companies, under Colonels and other officers of his appointing, when no such companies ever really existed; that he granted extravagant tracts of land, and exacted twelve pounds ten shillings for every thousand acres, in the remote parts of

the colony, "besides reserving considerable shares in the grants to himself, by inserting fictitious names," to the discouragement of settlements, and the weakening of the northern frontiers, expensively and difficultly defended; that he obstructed the course of justice, by letters to the Judges and other officers of Dutchess county to delay proceedings, and to the Sheriff not to execute process in causes merely civil, and by secreting an information filed by the Attorney General against a person presented by the Grand Jury for perjury, and afterwards making that very man an Assistant Judge of the Court of Common Pleas, and a Colonel of the militia of Westchester county, though informed by a member of the Legislature; that he openly sold offices, civil and military, and the reversions of some; that he made frequent, long, and causeless prorogations, and suffered the duties for the support of government to expire; that he "*commissionated*" ignorant and illiterate officers, some not able to write their names, and one to a Colonelcy in a northern county, suspected of being attached to the French interest during the war, and misrepresented the dispute to their Lordships, touching the limits of this and the province of New-Jersey; and these they assert to be the true grounds of the dissatisfaction during his administration. They alleged, that the charge of assuming the direction of the militia is absolutely false, and that for several of his last years, he never mentioned the militia to the Assembly.

On the great subject of the mode of support bills, the reader shall have their own words. "We further beg leave to assure your Lordships, that as it is our duty and interest, so it is our hearty inclination, to do every thing we can conceive that may contribute to his Majesty's service and the good of this colony, which we look upon as inseparably connected; and therefore should have raised a provision for the support of government, in the manner signified by that instruction, but that the raising a support of many years has, by long experience, been found to be much

more hurtful to his Majesty's interest, by giving perpetual occasion for disputes and contentions between Governors and Assemblies, than the method pursued for these sixteen or seventeen years last past. Had we indeed the happiness to be under his Majesty's care and inspection, we should think it our duty to to raise a support in the manner insisted upon in that instruction. But, unhappily for us, that is not our good fortune: we are under Governors, appointed by his Majesty, at a great distance from him and his immediate inspection, and who, as your Lordships must be acquainted, having no inheritance in the province, very often consider the government as a post of profit, which they hold by an uncertain tenure; and therefore, as it regards not them in what condition they leave the province upon their removal, instead of applying the monies raised for the necessities of government to the uses they were designed, have only been anxious to invent ways and means to convert as much as possible to their own private use and benefit. That this has been the case of most Governors here, the Assemblies of this province have, by the many contentions which have subsisted on this head, been but too sensible of, to the great and manifest detriment of his Majesty's service, and the good of this province; which sufficiently convinces us, that it is not for the interest of his Majesty and for the public good of this colony, to raise a support in any other manner than has been done for sixteen or seventeen years past, whatever it may be for the private interest of a Governor."

They then accuse Mr. Clinton, and probably with the agent's\* hint of inattention to the Indians, who

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\* In his letter of the 6th September, 1753, there is this clause: "I cannot avoid acquainting you with the concern it gave me to read, at the Board of Trade, the minutes of a late conference at New-York with seventeen Mohawk Indians, who went away not only expressing their dissatisfaction, but resentment. As their errand appears to me to have been principally about land, I am in hopes they had no authority to speak on public subjects, such as the hatchet and rod, and that they will be discovered therein by the Six Nations. I shall be anxious to know the success of the Commissioners deputed to treat with them, being very sensible of the critical posture of affairs with respect to the Indians and others."

were at New-York in June last, while the Assembly were sitting at Jamaica; and add, what does not appear in the journal, that the speaker, by letter to Mr. Clinton on the order of the House, besought him to promise them a meeting at Albany, a distribution of presents, and a redress of grievances; that he would make Hendrick, the chief sachem of the Mohawks, a present, and that the House would provide for these expenses and the maintenance of those Indians; that the Governor, nevertheless, dismissed them without any thing; and they were on the way on foot, with their baggage on their backs, when met by a gentleman from Albany, who, out of his own pocket, provided them a passage by water, and the House had reimbursed him, with thanks: and this they urged as a proof both of his neglect and contempt of the Indians.

As a vindication of themselves from the charge of remissness respecting Indian and other affairs, they add, that they had subjected the colony to a tax of above eighty-one thousand pounds, without deriving, as some other colonies had, any recompense from the Crown. The whole concludes with their favorite expression of a readiness "to hazard their lives, fortunes, and all that is dear to them, against all the King's enemies *whatsoever*."

The transmission of the address to the King was entrusted to the Lieutenant Governor, and a copy, with the impeachment, enclosed by the speaker to Mr. Charles, on the 13th of December, the day after the session, in a letter containing the following passages:—

"As I hinted before, no bill for the application of money has passed either the Council or Governor, and I apprehend that none will pass, until there be a countermand of orders from your side of the water. We have, however, contrived to procure a remittance for you of two hundred pounds sterling, which we hope will discharge your engagements. As to the Jersey affair, we think it his Majesty's right to ascertain the limits of his colonies; and if the stations be once settled with you, we shall soon agree about run-

ning the lines. We expect it will not be long before the colonies of Massachusetts Bay and New-Hampshire will come upon the stage in the same respect. It seems highly necessary that his Majesty should ascertain the boundaries of all his colonies, to prevent disputes among his subjects here, for we apprehend they will never agree among themselves." Again: "That party spirit which appeared among us during Mr. Clinton's administration, seems to be vanished, and there appears a great inclination to unanimity among all the branches of the Legislature. You have herewith, the remaining parts of the minutes of our House in this present session, and the whole of last session. You have also herewith a representation from us, to be laid before the Lords Commissioners for Trade and Plantations. Your own discretion will indicate to you how you are to manage the affairs. We expect to hear from you as quick as possible. Take particular notice of our address in our session at Jamaica, on Nassau Island, where we press Mr. Clinton to meet the Indians at Albany." By one of the acts of this session, the importation and passing of counterfeit British halfpence, and the very possessing them, was prohibited, under severe penalties: power given to search for them; and all disputes respecting them trusted, under forty shillings, to the summary hearing and description of one magistrate, and above that sum, to him and two freeholders of his choice. There was at this time an inundation of copper money, but it was not thought safe and expedient to venture a law against any but the adulterated coin. To bring it, however, into discredit, without giving umbrage to Great Britain, the House resolved, on the last day of this session, that they would proceed at their next to ascertain the value of halfpence and farthings. The merchants in the confederacy immediately gave their vote its effect, by subscribing an agreement not to receive or pay this species of money, but at fourteen coppers halfpence to the shilling; and the practice prevailed universally, after one inconsiderable riot by the mob, in

which the Lieutenant Governor assisted the magistrates in apprehending the chief rioters, who were punished for the ineffectual tumult they had raised in the capital. The policy of multiplying such summary tribunals, was questioned by the zealous advocates of the old trial by jury; and there were some who animadverted upon the Lieutenant Governor's agency respecting this species of coin, as what would in Mr. Clinton have been represented worthy of reprehension from the Crown.\*

In the month of March 1754, nearly six hundred pounds were raised, towards promoting a spirit of inquiry among the people by a loan of the books to non-subscribers. The project was started at an evening convention of a few private friends: Messrs. Philip Livingston, William Alexander (afterwards known by the title of the Earl of Stirling), Robert R. Livingston, William Livingston, John Morin Scott, and one other person. To engage all parties in the subscription, it was carried first to the Lieutenant Governor and the Council. The Trustees of the institution were annually eligible by the subscribers, and had the disposition of the contribution, with the appointment of the Librarian and Clerk. Every proprietor was to pay the yearly sum of ten shillings; and thus a foundation was laid for an institution ornamental to the metropolis, and of utility to the whole colony; for the remote object of the projectors was an incorporation by royal charter, and the erection of an edifice, at some future day, for a Museum and Observatory, as well as a Library. . Hitherto it consisted of valuable books in our own language only, which were deposited in the Town Hall, under the care of a Librarian. The number, by the annual subscriptions, is at present considerably increased;

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\* It was not till this day (12th December) that mortgages were subjected to a public registry for the prevention of frauds; but the act now passed, though a useful one, did not reach all the mischiefs intended to be prevented. In disputes concerning their property, the *first* registered is to be the *first* paid.

but Governor Tryon lately gave the Trustees a charter, which it wanted, to invite to the donations necessary to accomplish the liberal aim of the promoters of the subscription, who found some obstacles at first from the low state of science, and the narrow views and jealousies of sectarian zeal.

About this time, the continent was alarmed by the attempts of the French to erect forts on the Ohio. Virginia, as most immediately concerned, took the first measures for defence. Mr. Dinwiddie, their Governor, resolved to fortify the pass of Monongahela, and called upon the sister colonies for aid. Circular letters arrived soon after from the Ministry, requiring a Congress at Albany, for treating with our Indian allies, and concerting a united plan to defeat the French aim of engrossing the interior country, and, by a chain of forts, to restrict the British settlements to the sea-coasts, or at some distant day, to acquire the exclusive dominion of the continent. A design this of vast magnitude, but not difficult to accomplish, if France had at that day the sagacity to have preceded her fortifications by the less suspicious transportation of a few thousand emigrants from her populous dominions in Europe, to the rich and fertile banks of the lakes and rivers, of which, to our shame be it remembered, we had no knowledge, except by the books and maps of her missionaries and geographers.

These events had no ill aspect upon the resistance of the Assembly to the scheme of an indefinite support; and yet they met on the 9th of April, 1754, in ill temper, because they had no advices to flatter them with the hope of gratifying their revenge upon the late Governor; and while some conceived that manifestations of liberality and zeal, others were of opinion that testiness and parsimony, would be most likely to procure the wished-for success.

The Lieutenant Governor very naturally adopted the sentiments of the first class, and bore with some impatience the contradictions of the other, which was inauspicious to that favor which he meant to

cultivate with his superiors, and render consistent, if possible, with his popular dominion.

The speech apprised them of the French designs; of the spirit of Virginia; of her request for aid in the common cause; of the royal expectation, signified by the Earl of Holderness; and demanded not only supplies for transporting two of the independent companies to Virginia, fortifying the frontiers, strengthening Oswego, and treating with the six cantons, but that they should take a part in every expense conducive to the public utility.

The Assembly admitted that the defence was a common concern; applauded the vigor of Virginia—but complained of the desolations of the last war, and the expenditure of eighty thousand pounds, for a part of which they were still in debt and under taxes, and of the burthen of erecting and supporting their own fortifications in New-York, Albany, Fort Hunter, Schenectady, and Oswego; reminded him of their vote of credit at the last session, for one thousand pounds to our own Indians, and his expenses at the intended treaty; declared that they are able only to forward the two regular companies; and, after painting the designs of France in terms adapted to raise the popular resentment, they conclude with applauding the energy and success of his half year's administration; for which he thanked them, but with renewed importunities for the supplies, that they might the more effectually recommend the colony to the Crown.

They then voted a thousand pounds to Virginia, four hundred and fifty-six pounds for an additional garrison at Oswego, and allowed for Indian presents and the expense of the treaty, eleven hundred and twenty pounds: they engaged to reimburse the necessary charge of repairing Oswego, and to bear their part in the erection of new forts on the frontiers for the common defence. But when he reminded them of their former resolution, to repel force by force, and that it had raised the expectations of the Crown, they evasively resolved, that it did not appear clear to them that any of the *King's colonies* were

invaded; which drew from the Lieutenant Governor a message to inform them, that the French forts were erected in a country of the Eries, a nation extirpated by the confederate cantons, who, by the treaty of Utrecht, are to be considered as the subjects of Great Britain; and he ventured a conjecture that the French forts were constructed within the limits of Pennsylvania.\*

They could not, however, be induced to enlarge their contribution to Virginia; and had already sent up the bill to raise the sums voted for supplies, without any regard to the thirty-ninth instruction. The Council, perceiving that the sums were issuable by the Treasurer upon the receipts, and not by warrants from the Lieutenant Governor with their consent, asked a conference, to which, as a money bill, the Assembly could not consent.

In this exigency Mr. Delancey passed the bills that were ready, and prorogued the Assembly till the next day; when, after artfully informing the whole province by a speech, that the Council had rejected their bill because they thought it their duty to insist on a conformity with the royal instructions, he declared his hopes that they would make the necessary provision in a manner that might lay the Council under no difficulty, and urged both unanimity and despatch.

To this they answer in an address, asserting that the delay was not chargeable upon them, their bill being agreeably "to a method long pursued, settled with, and solemnly agreed to, by the late Governor

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\* Can there be a clearer proof of our infancy or negligence, than to find the Legislature at a loss to adjust a geographical question respecting a country so near our old maritime settlements! And does it not reflect disgrace upon the whole nation, that no attempt has been since made to explore the exterior parts of the continent, at the public expense? We have added nothing to the French discoveries by our conquest of Canada; though it would have become so opulent a people to have penetrated the wilderness before this day, not only to determine its breadth and explore its wealth, but open new objects to the view of moral as well as natural philosophy. This has since been done by Sir Alexander M'Kenzie, from Canada, and by Clarke and others, by the authority of the United States.

Clinton;" but promise, on "this pressing occasion, in pure regard to his Majesty's service and the interest of the country, to endeavor to frame a bill in such a manner as may obviate the objections lately made."

And as an evidence of their concord with the Lieutenant Governor, which they doubtless wished to have known, they now sent him a previous copy of the address, for he gave it an immediate *written* reply; and proceeded, before the renovation of the bill of supplies, to vote the articles of which it was to consist, but left out the aid of one thousand pounds to Virginia.

Thus a door was opened for other messages and addresses, for expressing his and their zeal for the King's service; for, on the 4th of May, he animadverted upon the resolves, and observed, that since they had lately voted the one thousand pounds as necessary, the omission of that bounty would now be disadvantageous to their reputation: and after holding up the Council once more to the public, by repeating that they were moved by their attachment to the instruction in rejecting the late bill, he beseeches them to reflect "how far a delay or disappointment of this service may be chargeable upon them."

The address of the same day, of which he again had a copy, now roundly asserts, what was only hinted at before, that the Council, and not they, are answerable for the delay; lamented that they could not gratify their inclinations consistently with the interests of their constituents; denied their omission to be a breach of their engagement, because they do not estimate their contribution to Virginia among the promised provisions, conceiving, as they do, that they are not indispensably necessary: they sullenly conclude with a request that they may be dismissed, to go home to their families.

The Governor had now an opportunity to argue upon the extent of their promise, which he did in another message of the same afternoon, and with some seeming resentment, and a menace of representing

their conduct to the King. But without waiting for the effect, as if it was calculated more to recommend himself to the King's Ministers than to persuade them, who wanted some excuse to the people for complying with the instructions to serve him, immediately after that message, he passed the bills,\* and broke up the session by a prorogation on the 4th of May.

One design of these altercations seems to have been, to give the Lieutenant Governor a dominion over the Council, the majority of whom were not in the interest of that party of which he had so long been the leader. Before the conference proposed on the bill lost by the prorogation, the Lieutenant Governor, thinking the Council might be influenced by the emergency, came in amongst them, and advised their yielding to the humor of the Assembly. One of them shrewdly asked him, "what then will become of us?" He answered with a smile, "I will suspend you, according to the instruction, and then pass the bill, and restore you to your places." But what confounded the politician, was a proposal of Mr. Alexander and Mr. Smith, to escape the dilemma by lending the money which the bill was to raise, on a reliance upon the generosity of the public. He left them, saying that he would himself make the loan, if he did not succeed with the House. This prorogation gave place for originating a second bill, which passed into a law.

It was at this session that Mr. Delancey intimated his design of running a temporary line between this and the province of New-Jersey, asking the House to defray the expenses of it: nor is it a mean proof of his influence, that he in the same message requested a further sum for adjusting the partition with Massachusetts Bay—not by the Commissioners appointed by the late act, but of his own nominating, with the advice of the Council, who were to meet others from

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\* One under the title of "An act for the payment of several sums of money for the use and security of this colony;" and another, "To prevent nuisances in the metropolis."

the Massachusetts Bay at the intended Congress at Albany.

Mr. Charles had, on the 4th of July 1753, informed the speaker of the report of the Board of Trade against the Jersey act; that "their Lordships demanded to know of the parties, whether they had any proposals to offer for running the lines and ascertaining the boundaries, which their Lordships said was necessary to be done, for the peace and quiet of both governments. On both sides it is offered to join in a commission from thence under the Great Seal. I have requested that they may be disinterested persons taken from the neighboring colonies; but the solicitor for the Jersey interest thinks this method will bring on a heavy expense. The matter lies over for further consideration. On the 23d of the same month, the agents of New-Jersey waited upon the Lords Commissioners for Trade and Plantations, and declared that, as Mr. Morris, to whom the conduct of the act for running the division line was committed, had his powers only from the proprietors of the eastern division of Jersey, he could not take upon himself to join in a commission for ascertaining the boundaries of the whole province. A declaration of this kind was no more than what might be expected from those who, having missed their principal aim, would be well content that this affair should sleep possibly another thirty-four years, till some favorable juncture should offer for reviving it. But I hope I shall be excused for offering, with all submission, my humble opinion, that now is the time for pushing those proprietaries in their turn."

The reader, therefore, will perceive, that the Lieutenant Governor's message could neither disserve him with the Ministry nor the House; who, on the 25th of April, agreed with him in the expediency of temporary lines both with our eastern and western neighbors, and pledged their faith for their proportion of the expense, without the least exception to his change of the Commissioners in the ordinary exercise of the prerogative of the Crown.

But the late mock quarrel of the Lieutenant Governor and the Assembly, did not entirely elude the suspicion that the latter had made some condescensions more to serve him than the colony: and whether it is to the same or some other motive, that the agent's letter to Mr. Jones, of the 30th of January, 1754, was long concealed from his fellow-members and the public eye, is left to the reader's conjecture. It was in this that he owned the receipt of their memorable impeachment of the late Governor, and ventured some hints unfavorable to the towering hopes of the party in power. "I have delivered in (says he) at the Board of Trade, your representation touching the thirty-ninth article of instructions to Sir Danvers Osborn, and am very apprehensive that that matter will take up a long consideration, as it must come before the King in Council, where, at the same time, it is not improbable that the representation of the Board of Trade, touching the state of your colony, will likewise come under deliberation. I hope time will be given to the colony to answer the charge contained in the preamble of that instruction, which, it is said here, can be supported by facts taken from the public transactions of the General Assembly. I also apprehend that the Board of Trade will acquaint Mr. Clinton with the instances of his mal-administration mentioned in that representation, and that your House will be called upon to prove the assertions they have made. It will be proper to have the proofs in readiness." He wrote a confidential letter of the same date, the contents of which can only be guessed at from Mr. Jones's answers of the 1st of June; the whole of which is herewith transcribed. "In your private letter of the 30th January, you inquire, 'In case we should be called upon for our proofs against Mr. Clinton, how could we prove that two Indian companies never existed, whose muster-rolls were sent home on oath?' If such companies ever existed, it was certainly with uncommon secrecy, since, by the strictest inquiry, no footsteps of any such thing has hitherto been discovered. We should

be glad to have copies of these muster-rolls, if possible to be obtained, which may probably lead us to further discoveries. The person Mr. Clinton made an Assistant Justice of, when here, and had a presentment of perjury against, was one Israel Honeywell, of Westchester county; and when Mr. Clinton was made acquainted with it by the representatives of that county, he sent to the Attorney General for the information, and would never return it to him again. I am perfectly well satisfied with the reasons which you give for not insisting on a public hearing on the thirty-ninth article of the instructions; and shall be very well pleased with Mr. Clinton's declining a vindication of his conduct, as he must then stand condemned in the judgment of every impartial person. As to the alteration you suggest may be made to the thirty-ninth article of the instructions, it appears to me to be so very small, that I am persuaded no General Assembly of this colony will consent to it even in that shape. I hope the next Governor that comes (in case no mitigation be made before) will bring with him instructions less vigorous, and better calculated for the interests of America and his own ease and quiet." Thus for the first letter. The second, of the same date, is this:—"When I wrote to you last, the House was sitting, and I then acquainted you that you might soon expect to hear from me. The session is now ended, and by our votes you will perceive that we have done nothing towards the expedition to Ohio, though we had that affair much at heart. You will find that the obstruction arose from the thirty-ninth article of his Majesty's instructions to the late Sir Danvers Osborn; and this, I apprehend, will always be the case, as long as the instruction continues to have a being. You doubtless have already, or soon will hear from Pennsylvania, what progress the French have made on the Ohio, which not only makes them masters of all the fur nations of Indians, but intimidates those which we call ours, and puts it into their power at any time to harass our southern colonies from that quarter, as they do us

and our eastern neighbors from Crown Point; and unless some vigorous resolution be taken, I fear poor English America will soon fall a prey to the boundless ambition of France. I have very lately received your letters of the 30th of January,\* via Philadelphia, and shall communicate them to the House at their next meeting. I expect you will hear from our Lieut. Governor, touching the Jersey affair of the line, and also from the Commissioners appointed for that purpose, touching Massachusetts Bay, &c. I have nothing further to add at present, but that the House seems to be entirely well satisfied with your conduct, &c. The ensuing summer will ever be remembered for the first Congress of Deputies from sundry of the colonies, for their common defence. Albany was the place appointed, and the time the 14th of June."

Mr. Delancey, as the only Governor who attended, took the chair, and the rank of the gentlemen who composed that assembly being adjusted, they sat in the following order:—on the right, Mr. Murray and Colonel Johnson, two of the Council members of this colony; then the commissioners of Massachusetts Bay, Mr. Wells, Mr. Hutchinson, Colonel Chandler, Colonel Partridge, and Mr. Worthington; Mr. Wyburn, Mr. Atkinson, Mr. Ware, and Mr. Sherburn, from New Hampshire; and from Rhode Island, Mr. Hopkins and Mr. Howard. Opposite to these, on the Lieutenant Governor's left, were two others of the New-York Council, Mr. Chambers and Mr. Smith; then the Connecticut delegates, Lieutenant Governor Pitkin, Major Wolcott, and Colonel Williams; for Pennsylvania, Mr. John Penn, Mr. Peters, Mr. Norris, and Mr. Franklin; and Colonel Tasher and Major Barnes, for Maryland.

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\* They were not disclosed to the House till the 16th of October, 1754, though the Assembly sat in the spring till the 4th of May, and again from the 20th to the 29th of August, and passed a law. Nor is it certain that these letters were produced even in October, the entry showing that the speaker laid several letters before the House without mentioning their dates.

Mr. Delancey, on the 29th, opened the treaty with the Indians, who had been tardy in assembling, by a speech preconcerted by the commissioners, and the presents were distributed in the name of all the colonies represented at that meeting.

It is sufficient to observe, on the whole, that the Indians, when dismissed on the 11th of July, were, or affected to be, well pleased, and engaged their co-operation against the designs of the French; and yet, one of these woodland Kings, who chalked out a sketch of the interior forests, rivers, and lakes, with a clear discernment of their relations, dropped the jealous but judicious observation, that Louisburgh was one key of the inland country, and New-York another, and that the power which had both, would open the great chest, and have Indians and all.

The main objects of the commissioners were, a compact for the united exertions of all the colonies in future, and a representation to his Majesty for the establishment and execution of the plan.

To this end it was proposed, that one general government should be formed, under which each colony should retain its present constitution, except in the subsequent instances, directing a change: that the general government be administered by the President General appointed and supported by the Crown, and a Grand Council elected by the respective colony Assemblies: that when an act of Parliament was passed for these purposes, the provinces should choose their delegates, to form the Council, in the following proportions:

Massachusetts Bay	- - - - -	7
New Hampshire	- - - - -	2
Connecticut	- - - - -	5
Rhode Island	- - - - -	2
New-York	- - - - -	4
New-Jersey	- - - - -	3
Pennsylvania	- - - - -	6
Maryland	- - - - -	4
Virginia	- - - - -	7
North Carolina	- - - - -	4
South Carolina	- - - - -	4—13

To meet first at Philadelphia, on the call of the President General, as soon as conveniently may be after his appointment : that the Council be triennial, and every interim vacancy, by death or resignation, supplied at the next sitting of the Assembly of the colony he represented : that after the first three years, the number of delegates to be regulated by their contributions to the public treasury, yet so as to be never less than two to a colony, nor more than seven : that the conventions of the Council to be annual or oftener, on their own adjournments, or the call of the President General, upon emergencies, with the written consent of seven, with due previous notice to all the members : that they choose their own speaker, and be neither dissolved, prorogued, nor continued to a longer session than six weeks, without their consent, or the special command of the Crown : that the wages of the Council, be each ten shillings sterling per day, *eundo, manendo et redeundo*, at twenty miles for a day's journey : that the assent of the President General, necessary to all acts, and that it be his duty to carry them into execution : that he, with the advice of the Council, hold all Indian treaties, affecting the general interest, and make peace or war with the Indians ; laws regulating the Indian trade ; all purchases, from them for the Crown, of lands not now within any colony, or when reduced to more convenient dimensions : that they grant out such new acquisitions, *nomine regis*, reserving a quit-rent for the general treasury ; raise and pay soldiers ; build forts ; equip vessels, to guard the coasts on this side of the ocean, lakes, and great rivers ; but not to impress men in any colony, without the consent of its own Legislature : that, for these purposes, they make laws, lay and levy general duties, imposts, or taxes, equal and just considering the ability and other circumstances of the several colonies, and such as may be collected with the least inconvenience, rather discouraging luxury than loading industry with unnecessary burdens : that they may appoint a general Treasurer, and in each government a particular one ; and

either draw for all sums upon the general treasury, or upon each particular treasury, as they find most convenient ; yet no money to be issued but by joint order of the President General and Council, except on particular appropriations where the President is previously empowered by an act : that the general account to be annually settled and reported to every Assembly : that the quorum, to act with the President, to consist of twenty-five members, having one or more from a majority of the colonies : that their laws not to be repugnant, but as near as may be agreeable to the laws of England, and be transmitted to the King in Council for approbation ; and, if not disapproved within three years after presentation, to remain in force : that the Speaker of the Council, on the death of the President, officiate in his stead, until the King's pleasure be known : that all military commission officers for the land or sea service, under this general constitution, be nominated by the President, with the approbation of the Council ; and all civil officers by the Council, with the approbation of the President ; but a vacancy in any province, in a civil or military office, to be supplied by the Governor of the province where it happened, until the pleasure of the President and Council can be known : that the military and civil establishments of the several colonies remain in their present state, this general constitution notwithstanding ; and that on sudden emergencies, any colony may defend itself, and lay the accounts of expenses thence arising before the President General and Council, who are to allow and pay as far as they judge just and reasonable.

Except Mr. Delancey, every member consented to this plan, and qualified as he was rather for short altercation than copious debate, he made no great opposition. Besides, he had objections not to be started before auditors of too much sagacity not to discern the motives which excited them, and who were too unbiassed to suppress any disreputable and unpopular discoveries. In so unusual a situation, he was conscious of an awkward inferiority, and found that

every effort to resist the scheme only contributed to forward it, for his exceptions and cavil were either obviated, answered, or overruled. But a single member could be influenced, and he was not able to proselyte any body else, except Mr. Murray, who had great merit as a lawyer; but, unless a question in that profession arose, he was either mute as a fish or confused, slow and superficial; a man of pride without ambition, or a single talent for intrigue—cold, distant, formal, and disgusting.

But the want of unanimity was of no other consequence than the impairing of Mr. Delancey's reputation; many, judging from the controversy with Mr. Clinton, had conceived him to be most inclined to the popular branch of the constitution, but now discovered that he had his eye to the other side of the water. The plan adopted would be neither, as he apprehended, to the relish either of the nation in general or to the servants of the Crown. They ascribed his unnecessary opposition to an impatience for distinction, prompted by ambition, which threw him off his guard. Being the only Governor, amidst a number of rival demagogues, his situation could not but be disagreeable to him. But the scheme, when offered, was not understood as approved by any other Governor on the continent. Too inconsiderable to hope for so illustrious a seat as the President's, they could not brook the exaltation of private citizens to stations in the grand Council, inflating their vanity, and enabling them not only to traverse their interests at court, but lessen their authority. That a scheme, begot in the frights of the delegates at the repulse of the Virginians under Colonel Washington, on the 3d of July, (the news of which came to Albany while they were assembled,) was disrelished by some of the Colonels, who perused the proposal with less discomposure, gave scope to their jealousies, and eyed the power it meant to establish, with horror; while multitudes of individuals jarred in their sentiments, as they were more or less attached to monarchical or republican principles; another sort

increasing the discord, by their scoffs at a model so dissimilar to the British constitution, which theory, experience, and habit had taught them to admire as the most perfect of all human inventions: in a word, their dread of the French excited the people only to speculate; it did not rise high enough to curb a diversity of sentiment; and if it had, that very unanimity here would have furnished an argument on the other side of the Atlantic, to blast a design considered by administration as accelerating an event dangerous to the union and stability of the empire.\*

It was in this month also, that a conference was held between Mr. Murray, Mr. Smith, Mr. Benjamin Nicoll, and Mr. William Livingston, under a commission from this colony, with the aforementioned Commissioners of Massachusetts Bay, concerning the line of partition between the two provinces: but the result was little more than a discovery of the proofs on which they respectively relied; a handle for fresh encroachments from Massachusetts Bay, and mutual complaints to the Crown. Massachusetts certainly meant nothing, for she gave powers to settle a final line, though pre-admonished that our Commissioners were to come only with authority to conclude a temporary boundary. They boasted of their prior possessions, asserted them to be ancient, and offered to be restricted by the distance of sixteen miles from Hudson's River.

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\* The plan was drafted in a committee consisting of one Commissioner from each colony. Mr. Smith represented New-York. The main object was to reduce the colonies to one head and one pulse. The eastern colonies were most ardent for the union, excepting Connecticut, who was too jealous of the power of the President. Each colony took a copy, under a promise to exert their influence upon their constituents for its establishment by an act of Parliament. The report gave rise to many debates, and especially respecting the funds for supporting this new government. A duty on spirits, and a general stamp duty, were contended for; but it was finally agreed to cast the President on the Crown, and the Council on the colonies, with a trifling allowance, that none but men of fortune might aspire to that station. To repress Mr. Smith's earnestness for the scheme, the Lieutenant Governor hinted to him, that Massachusetts acted with an aim to procure the President's chair for their Governor, and predicted, as he well might, that it would not be much encouraged by New-York.

Desirous, as soon as possible, to meet the Assembly, and, besides his other designs, to make suitable impressions respecting the transactions of the Congress, the Lieutenant Governor began a session on the 20th of August; when he mentioned the defeat of Colonel Washington on the east side of the Ohio, as within the undoubted limits of his Majesty's dominions, and exacted their promised aid to Virginia, and preparation for the defence of this colony; the erection of a fort in the Seneca's country, on the tract purchased by Mr. Clarke; the prohibiting of rum to the Indians; a more extensive militia act; and laid before them the Commissioners' plan, after a suggestion, that from a persuasion that the Assemblies were not disposed to join in vigorous measures, the Commissioners would not consider his proposal of erecting forts on the frontiers, but preferred an application to Parliament for establishing their scheme for a union.

A contribution to the defence of Virginia and Pennsylvania, was expedient to humor the Ministry; and to do it with reluctance, raised the credit of the Lieutenant Governor, gratified the parsimonious spirit of the people, and prevented suspicions of a sacrifice of the colony to the interests of the predominant party. The House, therefore, presented an artful address of a controversial complexion, quoting passages from the Lieutenant Governor's speech, to refute his demands, and justify their refusal of any donations. They confessed that the colonies were reciprocally bound to a common defence; but they add, there may be instances of colonies already so distressed as to want aid, which, therefore, are not bound to afford help. To apply this, they paint their own exposed situation in his own language, and ask him whether Virginia and Pennsylvania have built forts and fortifications, and whether they are daily called upon for the reparation and support of them.

They then promised to give something. but afterwards lament that they had an open frontier. The late war, in which they had expended near one hundred

thousand pounds, was a melancholy proof of it; and how to find a cure to the evil, they knew not. The other colonies derived strength from their settlements in *townships*, and close order, whilst our lands were granted away in patents, almost without bounds or number; and though we could erect forts and block-houses, they would serve no end—uncultivated tracts being not the objects of protection, but man's life and industry. After adding their testimony, that he had been *faithful to his trust* in the distribution of the Indian presents, they beg leave to return to their families, and promise a due attention to every matter he had recommended in the autumn of the year.

Would any man without doors, and not in the secret, believe, what is a fact, that they had already that very morning voted a gift of five thousand pounds to their fellow-subjects in Pennsylvania and Virginia? Mr. Delancey gave them more than thanks: he confesses the truth of their representations, and applauding their generosity, declared his confidence that they would, at their next meeting, raise ample supplies; and, by promising to promote the settlement of townships, converted his speech into a proclamation, which opened a wide field of business and profit in the Land Office; for this new method, more consistent with the spirit of democracy than the King's instructions, drew emigrants from the crowded colonies of New England; and subsequent Governors, interested in the innovation, have followed his example, to the increase of our inhabitants, and the extensive diffusion of the enterprising spirit and principles of those eastern republics.

The session continued until the act for issuing the five thousand pounds was passed,\* and a vote or two

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\* We assure you it was with no small difficulty that means have been found for giving that sum. The Legislature find themselves so embarrassed by the forms of the instructions, that it is with the utmost difficulty any money can be disposed of for the public service, however urgent or necessary. Mr. Jones's letter to the agent, 29th August, 1754, was perfectly silent respecting the call of Congress, as Mr. Delancey had predicted. Mr. Smith confined at home, attending the death-bed of his wife, and Messrs.

entered, to stimulate him in procuring temporary lines between this and the provinces of Massachusetts Bay and New-Hampshire; and another respecting their quarrel with Mr. Kennedy the Collector, concerning the seizure of the gunpowder, well calculated, as the cause was then depending in the Admiralty, to put Mr. Morris, the Judge of that Court, under some kind of awe, as well as to gain one vote in Council for the bill then depending there. The House sent a public message, to know what the Lieutenant Governor had done towards forwarding a representation to his Majesty respecting the seizure, and were satisfied with his answer, that the sentence was not yet passed, which they doubtless had already known from their own counsel, who all resided in the capital, and one of them, Mr. Nicoll, cousin-german and near neighbor to Mr. Watts, a member for the city. This incident would be trifling, if it did not mark, what is worth attention, the spirit of the day.\*

When the House met again in October, they knew that Mr. Chief Justice Morris had left England in the character of Governor of Pennsylvania,† from their agent; that their vote to repel force by force, on the Secretary of State's letter, had been universally applauded; that the Jersey proprietors had appealed to the Privy Council against the report of the Board of Trade; that he had offered to join in a commission for running the line; that the stations could not be ascertained *there*, conformably to the favorite but

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Alexander and Murray being absent in Jersey, the Council then present consisted only of Mr. Kennedy, Mr. Holland, and Mr. Chambers, who were prevailed upon to depart from the instructions by a mode perfectly new. The act directed the Treasurer to pay the five thousand pounds to the Lieutenant Governor; and after retaining three hundred and forty-eight pounds, expended in the victualling and transportation of the two independent companies which sailed in June, the residue was to be delivered, on order, to the order of the Governor of Virginia, with the advice of his Council.

\* Mr. Kennedy was Receiver General of the quit-rents, and had given some offence, by the impertunity of his memorial to the Lieutenant Governor for his recommending a law to enforce the payment of the quit-rents.

† He arrived in the Mermaid frigate at New-York, on the 12th September, 1754.

erroneous idea of Mr. Delancey, till the controversy concerning the construction of the grants, and what the true boundaries were, was first adjudged on a commission; that this was the mode also for setting our eastern limits, and that he wished to be ready with the names of the Commissioners of our choice; that he kept a watch on the great men of that country, respecting the affairs of the colony, but that nothing was determined as to the representation; that the address to the King had been sent up to the Council, with a letter from the Board of Trade, and that it would lay over till their report was made upon the representation; that the Board of Trade had of late affected great privacy, and were so jealous of the inquiries of the agents, as to give strict orders respecting information, which they think improper, and had got a poor Clerk dismissed from the Council Office, for giving intelligence about one of their reports; adding, "We have here, some who have expressed so much warmth about the publication of the instruction, that they will spare no pains to blacken the colony, in order, if possible, to justify that measure, should the affair come to a public hearing. There are others who, I believe, are inclinable to push the instruction by a more moderate course to the succeeding Governor, and to drop the inquiry about Mr. Clinton's management, by directing that successor to report how the affair stands. The Parliament will be dissolved soon. Our sugar islands make a shining figure at present, there being about fifty persons, who, from their estates and connexions there, are at the same time using the proper means to have seats in Parliament. I fear we shall soon have them pushing not only for the continuance, but the extension of that monopoly they now enjoy." Again: "I take occasion of showing how much your colony has to do at home, if a war is to break out, and how unable you are to do that, and give assistance to others, after the heavy expense you have sustained in the late one; that the interior system of your own government is unhinged by the instruction, which restrains you from

providing the usual support, and continuing the taxes necessary for that end. I hope Mr. Delancey has touched upon this matter, because the present state of affairs will contribute more to get you rid of this restraint, than any other argument whatsoever. The complaint of the Virginia Assembly, about the pistole fee demanded by their Lieutenant Governor, was last week heard and rejected; and the day after, Mr. Randolph, the Attorney General, who came hither to prosecute that complaint, was told at the Board of Trade, that his Majesty *had* no further occasion for his services. I am heartily sorry for the juncture of time in which this rejection and dismissal have happened. Much has been said about the warm votes of the Assembly, and their assuming a power to make use of public money to support their complaint. No nomination is made of a Governor for your colony, and until that is done, other matters will stop, unless the present exigency of affairs determines the Ministry to let the Assembly proceed to provide as usual for the support of the colony.”\*

Nor was the prospect of internal harmony so encouraging to Mr. Delancey as at the commencement of his administration. Mr. Clinton had a few friends, who favored him, not so much for the sake of his cause, as from a jealousy that the popularity and ambition of his adversary endangered personal safety, or obliged to an humiliating insignificance, and a base state of cringing submission. His accession to the command, induced to that partiality which was necessary to reward the services of his tools; and the want of means to gratify the expectations of others, increased the number of the discontented. His incaution respecting the institution of the College, enlisted many others on that side; and the oil of religious zeal being poured upon the coals, kindled a flame, neglected at the beginning, but in its conse-

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\* Vide Mr. Charles's letters to Mr. Jones, of the 7th and 8th March, 8th April, and 27th June, 1754.

quences destructive of his popularity, and unfriendly to his repose all the rest of his life.

When divers sums had been raised by public lotteries for founding a College, they were, by an act of the Legislature, in November 1751, delivered over to the custody of a set of Trustees, consisting of the eldest Counsellors, the Speaker, the Judges of the Supreme Court, the Mayor of the metropolis, the Province Treasurer, James Livingston, Benjamin Nicoll, and William Livingston, Esquires, whose trust was to take care of the principal and interest, and all future additions, until disposed of by the Legislature. They were afterwards empowered to draw five hundred pounds a year more, for seven years ensuing, out of the Treasury, into which it had flowed as a duty of excise; and then they were to begin a course of instruction, under masters of their electing for their new seminary.

Soon after the first of these acts, the Wardens and Vestry of Trinity Church, by Mr. Barclay their Rector, offered a part of the estate of their opulent corporation in the suburbs of the capital, for the erection and convenience of the College. This was so early as the 8th of April, 1752; and in autumn 1753, Dr. Johnson, the Episcopal Minister of Stratford in Connecticut, was invited to take the President's chair, and Mr. Whittlesey, a Presbyterian Minister of New-Haven, to serve under him, as second master of the new institution.

The churches of other denominations soon took the alarm, suspecting that the Episcopal persuasion intended to engross the government of the College; and the press began daily to represent the impolicy and injustice of devoting funds raised by all sects for a common use, to the dominion of one.

They were no longer in doubt than till the spring of this year, when, on the 16th of May, Mr. William Livingston discovered that his fellow-trustees were bent upon applying to the Lieutenant Governor for a charter under the Great Seal. The plan of its government being exhibited in a draft then laid before

the Board of Trustees, that gentleman protested against their proceeding without the authority of the whole Legislature, to whom they were responsible for their fidelity: but the other Trustees would not suffer the entry till four days afterwards, on their approving a petition which the Lieutenant Governor had consented to receive; the design being avowed, of excluding every man from the President's chair who was not in communion with the Church of England, and introducing the Common Prayer Book for the religious exercises of the College.

The Lieutenant Governor laid this request before the Council for their advice, and the grant passed against the opinions of Mr. Alexander and Mr. Smith, who assigned their reasons in a protest on the Council books. Mr. Delancey himself, who either conceived its foundation illiberal, or unfriendly to his popularity, after fruitless endeavors to dissuade the projectors from exacting the fulfilment of a promise they had extorted, ordered the seal to be put to the charter with some hesitation, and to the general dissatisfaction of every other religious persuasion in the colony, to whom, in point of numbers. the Episcopalians did not constitute the proportion of one-tenth.

It therefore concerned the Governor and his party, especially as the inquietude occasioned by the irruption of the French and Indians upon Hosiske and Senkaick above Albany was general, to improve the ensuing session for securing the favor both of the Crown and the people: and the autumn session was therefore no sooner commenced, than two popular bills were introduced—one to restrain prosecutions by information, and another to enlarge the power of Justices of the Peace, by enabling them to decide in civil causes to the value of five pounds.

While the Assembly were pondering how to fulfil their engagement before the late adjournment in August, Mr. Delancey urged them to several popular laws; supplies for new works at Albany and the frontiers; the discharge of the demands of public creditors. and particularly of that to Colonel Johnson. with

whom he was reconciled. A few days afterwards, he made further requisitions for purchasing a glebe, and erecting a church for the Missionary to the Mohawks; and for the Crown, proposed a law, with the specious title of rendering the recovery of his Majesty's quit-rents easier, and "to compel those (says he) who hold large tracts of uncultivated land, to a speedy settlement;" and, last of all, added a request for bedding to the troops in garrison at Albany.

They proceeded to vote the arrears of salaries with the second sum of one hundred and fifty pounds for his extraordinary expenses at the late Indian treaties; when he was obliged, on the 21st of November, to communicate a disagreeable letter from the Lords of Trade, which totally disconcerted their design of passing a bill for these debts, and compelled Mr. Delancey to talk a language which, from the mouth of Doctor Colden, would doubtless have produced a vote that he was an enemy to the colony.\*

Their Lordships approved the Council's negative to the late application bill, and observed, that an annual revenue may be employed to the purposes of wresting from the Crown the nomination of all officers whose salaries depend upon annual appointment, and of disappointing all such services of government as may be necessary even to the very existence of the colony; declared they were at a loss to conceive what other purposes this point, so strenuously insisted on, of granting the revenue only from year to year, can serve; for if it is imagined that the method of establishing a revenue by annual grants, is the only one by which the province can be secured against misapplications on the part of the Governor, or other officers of the Crown, it will be found to be

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\* The Speaker's letters of the 14th November and 7th December, show that there was a design of paying the debts and providing for the year, the instruction notwithstanding. In the first, he excites his hopes of the discharge of his demands, and a future supply; and in the last, informs him that the bill for paying the public creditors, as well as that for the annual support, went up, but were stopped by the Council, contrary to his expectations.

a mistake : that it is strict appropriation which produces such security, and not the present mode of granting the revenue annually, which of itself is of no effect at all, and if directed to the above purposes, what the Assembly themselves would not allow. They inform the Governor, that they have no objections to checks and penalties for preventing and punishing misapplications ; but add, that if the Assembly persist, by the means of annual grants, either to attempt arresting from the Crown the nomination of officers, or any other executive part of government, or disappointing the most essential services of the province, unless such pretensions are complied with, though they may have succeeded in such attempts, either by the *weakness and corruption of Governors*, or by taking advantage of the necessity of the times : “ yet these attempts are so unconstitutional, so inconsistent with the interests of the mother country, as well as of the Crown, and so little tending to the real benefit of the colony itself, that it will be found they flatter themselves in vain, if they imagine they can ever give them a stability and permanency. I hope, therefore, (continued Mr. Delancey,) you will take these weighty reasons into your most serious consideration, and provide a permanent revenue for the support of government, in such a manner as may put an end to any dispute on that head.” But he had it also in charge to inform them, that he could no longer consent to any emissions of paper money as a legal tender, nor to any bill for this species of money, though no tender, without a suspending clause till the King’s pleasure could be known ; and he desires the House to conform to these directions.

If he knew at that time, of the ill success of their address against Mr. Clinton, his reasons for concealing it are obvious.\*

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\* Mr. Charles’s account of it (15th November) is this :—“ Observing that your Honorable House have not received any notification in form of their address to the King in December last, transmitted by the Lieutenant Governor, I think it consistent with my duty, and the attention I owe to

This produced an address, disclaiming all intention to abridge the Executive, though they would not recede from the new mode; and a declaration, that they could not construct forts without a further emis-

whatever proceeds from the General Assembly, to inform you that his Majesty has been pleased, by his Order in Council of the 6th of August, to reject the said address, upon a representation of the Lords Commissioners for Trade and Plantations, who have undertaken to verify the charge against the colony, contained in the 39th article of instructions to the late Sir Danvers Osborn, Baronet. I am sorry to find that their Lordships have been pleased to apply the words *falsely* and *maliciously*, made use of in your said address, to their representation of the state and condition of the colony, instead of applying them to the suggested matter and supposed facts upon which that representation is *thought* to be founded, and against which you have desired to be heard—for this I take to be the obvious meaning and intention of your House in the use of those words." It was about this time that Mr. Charles framed a case for Doctor Hay's opinion respecting the instruction, preparatory to his design of complaining of the offensive instruction in a petition to the King; but it cannot be ascertained that it was ever carried into execution. It is, however, here transcribed, to gratify the curiosity of the reader.

"*Case of New-York.*—Be pleased to peruse the speech, instructions, and address, contained in the printed votes of the Assembly of his Majesty's colony of New-York in America, the representation of the said Assembly, and the address to the King.

"New-York is one of the most considerable of the British colonies on the continent of North America, under the immediate government of the Crown. This colony belonged formerly to the Dutch, and, with a large tract of land, was called New Netherland, which, in exchange for Surinam, was, by the treaty of Bredu in 1667, surrendered by the Dutch to the English.

"All the British colonies, or most of them, have in them three distinct estates, in humble imitation of the excellent constitution of their mother country—viz. a Governor, the representative of the King; a Council, which is legislative; and likewise a Court of Judicature, resembling imperfectly the House of Lords, and a General Assembly, or House of Representatives, resembling imperfectly the House of Commons. The Governor is appointed by the King; has a power of calling, proroguing, or dissolving the General Assembly, and has a negative in all laws which, having passed the Council and Assembly, are presented to him. The Council are appointed by the King, and, with the Governor, form a Council of State, are assistant Judges to him, as Chancellor, and in the Court of Appeal. As a legislative body, they sit distinctly, and without the Governor, on all bills that either originate with themselves, or are sent up to them from the Assembly. The General Assembly, the free election of the people, choose their own speaker and officers; are judges of their own elections; prepare and pass bills in order to be sent up to the Council; and claim a right that all money bills should originate with themselves.

"The manner of providing for the support of government in this colony, which has obtained for sixteen years past, has been thus:—In September, yearly, (if the House is permitted to sit,) the Assembly prepare and pass a bill, whereby provision is made for the usual yearly salaries to the Governor, to the Judges, and other officers and ministers of the government, for

sion of paper, nor would they consent to that, unless those bills were made a legal tender. They therefore request him to represent the case of the colony to the King; engage to provide for its defence, when

the ensuing year. At this season also, all claims and demands upon the colony being received, examined, and reported upon by the committee, who prepare their bill. Provision is likewise made for the discharge of those demands; these liquidated and settled; and the Treasurer of the colony is by the said bill directed and empowered to pay the said salaries and debts to the respective persons named in the said bill, which having passed the Assembly, is sent up to the Council, and if passed by them, is sent up to the Governor, and if passed by him, becomes a law of the colony, subject only to the disallowance or repeal of the King.

"The credit of the colony stands unimpeached, and, in point of merit with the mother country, comes short of none of her colonies, particularly in the late war; and for seconding the views of the Crown in the reduction of Cape Breton and Canada, they raised about fifty thousand pounds sterling, without desiring, as other colonies have done, any reimbursement from the Parliament of Great Britain.

"Governor Clinton, the immediate predecessor of Sir Danvers Osborn, took his salary annually, during the whole course of his administration, in the method before mentioned. It is true, that after having thus accepted of it about four years, he endeavored to have it settled upon him for a term of years, as had actually been done upon several of his predecessors; but the Assembly persisted in the refusal of it: whereupon, and upon sundry other disputes which have arisen between Mr. Clinton and several Assemblies of the colony, a representation to his Majesty in Council was drawn up by the Lords Commissioners of Trade and Plantations, 'whereof the agent of the colony could never obtain a copy, having received for answer to his application, that it was a matter of state.' So that the colony has neither been made acquainted with the particular facts alleged against their General Assemblies, nor have they been heard in their own defence.

"Sir Danvers Osborn succeeding to Governor Clinton, carried out with him the said 39th article of instruction; but dying soon after his arrival in the colony, that administration devolved upon James Delancey, Esquire, his Majesty's Lieutenant Governor, who, with his speech to the Assembly, laid before them the said instruction.

"Be pleased to understand, that the King has been advised to reject the address of the Assembly, by an Order in Council of the 6th of August, whereof a copy is not to be obtained: whereupon your opinion is desired, previously upon the legality and the propriety of the agent's address, intended to be sent to the King; then upon the following points relative to the 39th instruction:—

"1st. Whether the natural born subjects of the King, in the British American colonies, are not entitled to the rights, liberties, and freedom of English subjects?

"2d. Whether the people, by their representatives in General Assembly, are bound to obey the directions of the Crown, signified in the commission and instructions to a Governor, which, though a rule to him for his conduct, is not understood to be to the people the measure of their obedience?

"3d. Whether positive law only, be not to the people the only rule of that obedience?

he is unembarrassed by instructions; and give him their promise to provide for erecting a fort to the northward of Albany.

The Governor, in the reply, professes his satisfaction in their assurances that they mean no encroachments on his Majesty's authority; and gliding tenderly over their answer, only asks whether the annual

"4th. Whether a command to grant money, and that too in the particular manner prescribed by this instruction, and not otherwise, is constitutional and legal on the principles of British liberty and government?

"5th. Whether this instruction doth not destroy the freedom of debate essential to the constitution of an Assembly, in whom the Crown admitted the power of preparing and passing bills for granting money?

"6th. Whether the said instruction doth not destroy the like freedom of debate in the Legislative Council of the colony, subjecting them likewise, for the exertion of that freedom, to punishment by dismissal?

"7th. Whether the power given to the Governor over the Counsellors by this instruction, doth not destroy a balance in the state necessary to be maintained between the Governor and the people?

"8th. Whether the order to remove or suspend any Counsellor, or any member of Assembly, holding a place of trust and profit, or any officer of the government, because of voting contrary to the direction of this instruction, is compatible with British liberty and a British constitution?

"9th. Whether the power of punishing for lessening or impairing the prerogative, is not a very unlimited power, and may be subject to very great abuse?

"And in general, what are your sentiments touching the legality of this instruction.

"In general, I am of opinion that the address of the agent, intended to be presented to his Majesty, is legal, and highly expedient; and that the 39th instruction is a most ill-advised and intemperate measure, and subject to the several objections mentioned in the queries.

"(Signed)

GEORGE HAY,

*Doctors' Commons.*"

Mr. Charles, on the 19th December, appeared before the Lords of Trade, at their call upon the agents, to show their authority, and he in particular was asked, whether he considered himself as obliged to correspond with the Governor of the colony, or to receive directions from him? His answer was, that "he had, in matters of public moment, several times addressed himself to the Governor, and was always ready to receive and consider his commands." He then moved to know what was done on the Assembly's representation of the last year. Was answered, "that it lay before them, and would be considered upon the appointment of a Governor: that the aim of their Board was to bring the province back to its ancient method of raising and issuing money; and they had lately explained themselves fully in their letters to the Lieutenant Governor, and that it remained with the Assembly to do their part." "I then (continues Mr. Charles) took my leave of their Lordships, after saying, that it could not but very sensibly affect New-York to find a measure of this nature confined to them singly, while all the King's governments on the same continent were permitted to provide for themselves by annual support." *Letter to the Speaker, 20th December, 1754.*

support will not have the effect apprehended; joins in their testimony that there can be no forts without issuing more bills; informs them of what they well knew, that the late act of Parliament against the paper money in the eastern colonies, was made at the instances of the London merchants, injured by depreciations for want of funds to cancel the emission; subjoins, what the Assembly should have witnessed, that the value of our bills, by our superior care, was not such as they had been elsewhere, *nine for one*; and, upon the whole, proposed an emission of forty thousand pounds, for fortifications, to be sunk by a tax of five thousand pounds per annum, commencing in 1757, when the present taxes were to cease; and to such a bill he will consent, if there is a clause inserted to make the paper no valid tender for a debt contracted in Great Britain.

It required some courage to venture this hint; for the merchants in the British trade were instantly alarmed with the prospect of ruin, through the scarcity of silver and gold to discharge their immense debts: but their clamors were suddenly appeased by a set of resolves—that laws with suspending clauses, might expose the colony to ruin before the King's pleasure could be known; that bills not tenderable, would be useless; and that to make them a tender to some and not to others, would create confusion, and be injurious to commerce.

Unable to pass any bills for raising money, they contented themselves with resolves, engaging for the salaries of the officers; and to put into Mr. Delancey's hands the old allowance of four hundred pounds, for fuel and candles for the independent companies, though two of them had been drawn away to Virginia, and the rest to Oswego; for when Captain King arrived in a few days after the session, to take the command of the Governor's company, with Mr. Pitzar the Commissary, they found only a sergeant and eleven privates at New-York, with but three good muskets, and not an ounce of powder in the magazine; and the two sentinels at the Lieutenant

Governor's door, during the sitting of the Congress at Albany, were relieved by others who came from the fort, without firelocks. But though there was now a saving of the Chief Justice's salary of three hundred pounds a year, and an augmentation of fifty to Mr. Chambers on that account, yet nothing was added to their former vote of one hundred pounds to the third Judge, who had deserted the party, and made his peace with Mr. Clinton, and been restored to his office, 28th of July, 1753, on the future tenure of good behavior, and who was therefore out of the reach of their resentment in any other way than by diminishing his support.\*

There was a necessity at this juncture, that the members of the Assembly should be vigilant of their interests.

The conduct of the College Trustees, and the scheme to give the Episcopalians a pre-eminence in the government of the institution, had given umbrage to all the other sectaries, and compelled the House to attend to their clamors. To this end, soon after their meeting, they ordered the Trustees to report their transactions under the act by which they had been appointed; and the same day, the Ministers, Elders, and Deacons of the Low Dutch, an ancient, opulent, and enchartered Church, presented a petition, implying that the College ought to be incorporated by an act of the Legislature, and insisted that provision might be made in it for a Professor of their numerous denomination.

The Trustees came up on the first of November, and the contrariety of sentiment amongst them appeared in two separate reports. Mr. William Livingston offering one, and Mr. James Livingston and Mr. Nicoll another. They were no sooner read, than the

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\* The House had some time before voted Mr. Chambers two hundred pounds for the last year's salary; but after the message on the letter from the Lords of Trade, but one hundred and fifty pounds, with fifty pounds more on consideration of the present burden of the office, without expressing any vacancy in the chief seat of justice.

House became divided upon a motion to enter both of them at large on the journals of the House, which was carried by a considerable majority. The capital then in the hands of the Trustees, exclusive of the annual revenue of five hundred pounds from the excise, was five thousand four hundred and ninety-seven pounds, fourteen shillings and sixpence. When the reports were considered, the Assembly resolved, *nem. con.*, "that they would not consent to any disposition of the monies raised by way of lottery, for erecting and establishing a College within this colony for the education of youth, or any part thereof, in any other manner whatsoever than by act or acts of the Legislature of this colony, hereafter to be passed for that purpose." And Mr. Robert Livingston, who represented the manor of that name, immediately had leave to bring in a bill to establish and incorporate a College, which he introduced that very afternoon.

The scheme opened by this bill, puzzled every branch of the Legislature. There was no hope of its passing either the Council or the Lieutenant Governor, not only from its repugnancy to their own religious attachments, as members of the Episcopal Church, but because it subverted the establishment they had given it by letters patent in the name of the Crown. By the Assembly it could not be rejected from their dread of the people, nor passed consistently with their party prejudices. In this dilemma, Mr. Walton found them a door of escape, by a motion that the committee to whom it was referred be discharged, the consideration of the bill postponed to the next session, and in the interim printed for the opinion of their constituents. It was introduced with observing, "that the subject was of the utmost consequence to the people they had the honor to represent, with respect both to their civil and religious liberties;" and that the advanced season of the year did not give time to consider all the parts of the bill with that attention its vast importance required.\*

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\* It may be seen at large, with Mr. William Livingston's reasons, in the journals of the Assembly. The bill was drafted by Mr. Scott, for insti-

This measure increased the jealousies abroad, especially when it was observed that the House afterwards set another lottery on foot; negatived a motion of Mr. Livingston's, to postpone the second reading of the bill for it to the next meeting, and another for a deposit of the money, till applied by a future law; and carried a third for striking out a clause for enacting that any member, for moving to apply the sum to be raised by it for any other than the use of the College, should be expelled.

Though fully premonished by the agent, that the controversy with New-Jersey would not terminate, unless by the adjudication of a Court of Commissioners constituted by the Crown, and urged by memorials and proofs of the distressed condition of the people on the borders; yet, from an obstinate attachment to the opinion, that the stations from and to which the dividing line was to be run were clear, or to protract the controversy, an act was now passed to submit it to the King, and a vote entered as a security for a moiety of the expense.\* “An act is passed,” says the Speaker in his letter of the 7th December, “submitting the dispute to his Majesty *solely*, which we know will bring that matter to a speedy issue.”

The act to regulate informations for offences prosecuted in England by the Clerk of the Crown Office, was a very popular law, though it much offended the then Attorney General,† who had excited the disgust of some merchants of distinction, by lending too easy an ear to trifling complaints, and informers of very slight characters.

The English statute of the 4th & 5th William and Mary, cap. xviii., made no invasion upon the rights

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tuting an University upon liberal principles, on a provincial endowment, as free as possible from all the contracted aims, prejudices, and partiality of sectarian zeal.

\* His Majesty repealed this act; and, by an instruction of the 12th of August, 1755, required a law to provide for the expense of executing a commission, under the Great Seal of Great Britain.

† Mr. Kempe, who, with his family, arrived here 2d November, 1752.

of the King's Attorney General, for it affected only the Master of the Crown Office. But this act, since we had no such officer, was meant to bind the Attorney General, whenever he proceeded for such offences, as the Master might prosecute in England, and was therefore unskillfully drawn, unless it abridged the confidence reposed by law in the Attorney General; and if it did so, the Crown was in some measure affected as well as its Attorney, whose emoluments, by a law withdrawing confidence in his prudence and integrity, for slighting frivolous applications, were greatly abridged: for, according to the design of this act, no information for misdemeanors prosecutable by the Master of the Crown Office, could be instituted, but at the risk of costs to the defendant unless it was filed by order of the Governor and Council, or the Judges of the Supreme Court, or where the Court shall certify that there was reasonable cause for the prosecution. The security required, is rarely adequate to the charge of the defence. But it is a much more material fault in legislation, to leave it doubtful when Mr. Attorney proceeds as such, or as Master of the Crown Office. It was adjudged by Messrs. Delancey and Horsmanden, October Term, 1756, in the case of Gomez and *alii ads. Dom. Regis.*, that the informer, if bound for the costs, is no witness on the trial to prove the assault, &c. upon himself nor his wife. The counsel for the defendants cited Gil. Evidence, 121, 122. Trials per p. 126. 1 Sid. 337. Hard. 331.

*Kempe*, Attorney General. Interested witnesses are received, where necessary. *Per Curiam*. The objection is unanswerable. The prosecutor is evidently interested, and the wife by necessary consequence. Since the statute of William and Mary, of which our act is nearly a copy, a nominal prosecutor is named in the information, to elude this very objection. The defendants were acquitted.

The King's Bench will not give leave to file such informations, on the application of the Attorney, as he may bring *ex officio*: those cases are not within

the statute. 3 Bur. 1565. To give the intended efficacy to this act of Assembly, the Court should withhold the order in every instance where the prosecution in England belongs to the Crown Office.

The five pound act introduced and passed, was a favorite law of the Lieutenant Governor's, for it augmented his influence in every part of the colony. The profits of the Justices of Peace, who were all of the Governor's appointment, and generally nominated by the members of the country, now rendered that employment more lucrative, and tied together the links of corruption between the election jobbers and the Assemblymen, and between the latter and the Governor, and formed a chain of dependence to which the ruling party did not object, especially as the act was only limited to four years, and might be afterwards dropped or renewed, according to the expediency of the hour. But experience has shown, what was obvious enough in theory, that those mischievous consequences of these contemptible, summary, and disorderly jurisdictions, have greatly overbalanced the delay and expense assigned as the motives for this innovation, as will more particularly be observed upon the opposition to the continuation of this dangerous policy in a subsequent administration.

Mr. Delancey hesitated several months before he consented to take the Chancellor's oath; and at the beginning of the next year, held a Court of Errors, to the gratification of those who thenceforth were confirmed in the opinion, that by the incompatibility between his old and new employment, his office of Chief Justice was extinct. That ascendancy, therefore, which he had acquired as an independent demagogue, now began to abate, and his conduct, like other Governors, to be suspected, as meditating rather his own and the advancement of the interests of the Crown, than the security of the rights of the people; and it was his misfortune, that the first adjudication in Error riveted these unfavorable suspicions.

A bill of exceptions had been taken on a trial at Bar to the opinion of the Bench, and execution suspended by a writ of Error, returnable before the Lieutenant Governor and his Council. The question above was, whether the writ ought not to be quashed, the King, by one of the instructions, having permitted appeals to them, where the *quantum* in litigation was upwards of three hundred pounds sterling. The verdict in the present case was for a less sum; but the counsel of Bryant, the plaintiff in Error, for the retention of his cause, insisted that the writ of Error was a writ of right; that, according to the record, manifest error had intervened; that the Governor and Council had been long in possession of the power to redress the errors of the Supreme Court; that this authority was part of the colony constitution; that though it originated by, yet it did not depend, any more than the Supreme Court, upon the royal instructions; that the existence of such a Court of Errors was essential to the due administration of justice in the colony; that though the Court of the Governor and Council would not prescribe for their right to take cognizance in error, as the House of Lords did in England, it stood nevertheless upon the principles of necessity and utility, which had given birth to the prescriptive right of the peers, and that it was their duty to hold, and as far as possible amplify. their jurisdiction; that the authority could not be legally abridged or altered at the pleasure of the Crown; that had the instruction the efficacy of a law, yet speaking only of appeals, a term known in the civil law, it could not relate to relief in a course of Error, according to the common law; that it had never been duly promulgated, and was therefore not binding upon the subject; that the writ of Error was itself a commission under the Great Seal to the Lieutenant Governor and the Council, posterior to the instruction, and for that reason their authority was not affected by the latter; and, lastly, that unless the judgments of the Supreme Court were reversible in this way, they were so in no other, and the Judges,

consequently, had an uncontrollable, absolute, and formidable despotism over the property of the subject, in all cases under three hundred pounds sterling—an authority dangerous to the colony and all suitors in it, not trusted by the constitution to any Court in England.

The hearing upon this popular doctrine was on the 27th of March, 1755, and the decision to overrule all the objections and quash the writ, agreeably to the King's order, without entering into any inquiry on the merits of the bill of exceptions. The only satisfaction of the counsel for the plaintiff in Error, (of whom the author was one,\*) arose from a discernment that the whole Court was conscious of a timid obsequiousness; and the Lieutenant Governor and Mr. Murray, more anxious than others, contravened the doctrine they had endeavored to inculcate in that opinion, which the latter had delivered upon honor to the Assembly, to support the Court of Exchequer, in the year 1734.

Before this determination, Mr. Delancey and the Council had fallen under some degree of odium. The undistinguishing multitude were alarmed at the prospect of a war, and the defenceless condition both of our sea-coasts and inland frontiers. It was to still these clamors that the Council advised, and the Lieutenant Governor issued, an unusual proclamation, on the 10th of January, under his private seal, calling the Assembly to meet on the 4th of February, though they were under an adjournment to the second Tuesday in March.

He informed them of the armament coming out with General Braddock, for the expulsion of the French from the Ohio; urged them to fortify the colony; advised to a more compulsory regulation of the militia, and to an attention to the Indians; and

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\* With Mr. William Livingston and Mr. Scott. Mr. Nicoll, for O'briant the defendant in Error, on a motion for quashing the writ, had a writ *nisi cause*. To which we plead on the 26th December, 1754.

said, "he flattered himself that they would not risk losing their all by an ill-timed parsimony."

During the consternation, the proclamation, (notwithstanding a perfect concert took place between all the three branches for disregarding the royal instructions, and in a few days they emitted forty-five thousand pounds in bills of credit, to be sunk by a tax,) prohibited supplies of provisions to the French colonies, and subjected the militia to such duties and penalties as the Executive thought fit to prescribe, but to screen the Assemblymen, the militia act originated with the Council.

At this juncture, Mr. Shirley dispatched his envoys to animate the colonies to the project he had long meditated for exterminating the French from the north continent of America.

This gentleman was colleague to Mr. Mildmay for adjusting the contests in America, left unsettled by the peace of Aix-la-Chapelle, and in the conference with the French commissioners at Paris, became jealous that France had the ambitious aim of subjecting all the northern parts of the new world to her dominion. Then it was, that he conceived the idea of making a conquest of Canada. He proposed the design on his return to Mr. Pelham, but was silenced by the pacific and economical maxims of that minister, and ordered out to his government, from whence he never ceased his complaints, to excite administration to some vigorous exertions. The ministry were at length compelled to listen to his suggestions, by the accomplishment of his predictions, and letters were now written, by Sir Thomas Robinson, (Mr. Pelham being dead,) apprising all the provinces of their danger, of which Mr. Shirley made a good use.

To this colony he sent Mr. Thomas Pownal, who was trusted with the secret before communicated to the Assembly of the Massachussetts Bay, under the tie of an oath. Canada was to be threatened on the side of the Kennebec and the Lakes Champlain and Ontario, while Braddock's two regiments with the

Southern aid, were to penetrate and reduce the French Forts on the Ohio.\*

Pownal found Mr Delancey and his party rather cold and backward, and applied himself to a party who from various causes were become so considerable as to inspire the Lieutenant Governor with some awe, and especially as their views corresponded with the recommendations of the ministry.

The Lieutenant Governor, therefore, soon after Mr. Braddock's arrival, sent a message to the Assembly, on the 26th of March 1755, pressing for supplies to quarter troops and impress carriages &c. and apprised them of the precarious condition of Oswego, where the garrison were exposed to want by the non-payment of their debt to Sir William Johnson, who had contracted to subsist them.

Having communicated to them at the same time Mr. Shirley's letters, the Council called for a committee from the lower house, to hear Mr. Pownal's explanation, and the joint committee immediately resolved, "That the scheme was well concerted, and that if Massachusetts would raise fourteen hundred men, we ought to find eight hundred, and they agreed to contribute to a general fund for the common charge of the war.

Unfortunately the necessary preparations were suspended for Mr. Braddock's approbation of the plan. Mr. Shirley was piqued at this delay, for no act was passed; but the house after three days adjourned, till the General's opinion could be obtained at a congress, to which he had called several of the Governors at Alexandria.

That convention † was held on the 14th of April, and when Mr. Delancey returned, urged the Assembly on the 23d of that month to proceed; informing them, that General Braddock had consented to the

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\* Mr. Shirley's letter was communicated to the council of New-York 10th March 1755, and Mr. Pownal introduced four days after to explain and enforce the project.

† Governor Shirley took his route on Long Island, and passed through the village of Flat Bush on the 6th of April. Mr. Delancey, with his brother Oliver and others, followed the day after.

plan, and the next day, the Assembly resolved and soon after passed bills, for levying eight hundred men, to act on the side of Crown point, to impress artificers for constructing boats, &c. and to prevent the exportation of provisions to the French.

After these became laws, Mr. Delancey on the 2d of May adjourned the house to the 20th, and then to the 27th, when he further informed them, that Connecticut had agreed to supply three of the eight companies at our expense, and that he had sent to Virginia for the necessary arms for the whole eight hundred; that more forts would be necessary on Hudson river, and a large vessel in the Lake, (St. Sacrament, since Lake George); that it was agreed at Alexandria to make presents to the Indians, and that money ought to be applied for that purpose, and for the expenses of Mr. Johnson, the Commander in Chief of the provincial troops, against Crown Point, suitable to his rank of Major General.

The Assembly, proceeding upon the plan of the late Congress at Albany, for apportioning the aids of the colonies, voted fifty pounds towards artificers for constructing forts. One hundred and seventy four pounds ten shillings and eleven pence as their proportion of eight hundred pounds sterling, for Indian presents. Eighteen hundred for arming their levies, and engaged for their proportion towards a vessel on the lake. A bill was set on foot for the payment of the necessary services of the Crown Point expedition, and clauses ordered to be inserted to pay the Lieutenant Governor, two hundred pounds for his journey to Virginia, and twenty-two pounds more to his brother Oliver, who went to Connecticut, to obtain three hundred men towards accomplishing our levies in that colony, and for his *diligent* and *faithful services* there, he had the thanks of the house. But before any further progress was made the Lieutenant Governor adjourned them on the last of May, to the 10th of June, when he informed them, that he had procured arms from Virginia for six hundred of their men; that a severe law was necessary to obstruct the sale of

rum to, and purchases of, arms from the Indians ; that a reimbursement was required for a present to them of Indian corn, and that drafts from the Militia were expedient towards completing the levies. This message contained the following clause : “ In the quotas to be settled for the contingent charges which may arise, none of the colonies ought at present to be considered but such as are engaged in the expedition, lest the service should suffer by it, or by too minute a calculation. The proposed expedition is of such consequence, that it ought not to be retarded by any light consideration.”

On the seventeenth of June, he calls upon them for two thousand pounds, as a fifth of the expense of the train. Repeats his request towards General Johnson's expenses. A supply of their proportion towards Indian presents. Provision for a Quarter Master to be appointed by himself, and applauds the former evidences of their zeal.

Two days after they agreed to give two thousand pounds towards the train ; four hundred and fifty pounds to the Indians ; fifty pounds to General Johnson for his table, as much to the Colonel of their own regiment ; thirty pounds to the Major, and four shillings a day to one of the Officers serving as Quarter Master.

The Council afterwards sent the lower house a bill, against the exportation of provisions, stores of war, &c., and in the second reading of it, the Lieutenant Governor adjourned them again to the twentieth of June for four days.

Mr. Kennedy, the Receiver General, carried through his quit-rent bill at this session, but it excited resentment, and the house on the twenty-fifth of June, desired to know from the Lieutenant Governor what had been done respecting the powder he had seized as the King's Collector ; adding, “ that it will be impracticable to keep any gunpowder for the use of the colony, if it be liable to be thus arbitrarily seized and taken out of the custody of the officer, under pretence of being unlawfully imported.” He

replied, that the affair (as he took it,) rested with the lawyers, and promised to give directions to quicken the proceedings;\* and the same day they sent him a message, desiring him, as Mr. Shirley was hourly expected, “to use his utmost endeavours to settle with him all matters relating to the Crown Point expedition, that the same may not be retarded for want of any articles necessary for carrying on the said expedition.”

The Lieutenant Governor laid before them on the fourth of July, a request from Boston, that preparation might be made by this colony for an addition to the troops. They only voted that they would augment their aid if it was necessary; and after adding sundry clauses for further expenditures, sent up the bill to provide for the services, on the fifth of July, which the Council read thrice and sent up to the Governor, who passed it the very same day it came up from the Assembly, and he then adjourned them to the twenty-second of that month.

The people of the Massachusetts Bay, taking the advantage of the common distress, were now making new inroads upon the colony. The scattered farmers on the eastern borders, unable to resist the large bands of intruders who came upon them by surprise, had their property despoiled, and were themselves carried off to distant jails, and harassed by the demand of extravagant bail. The pretext for these violences, besides a proclamation to apprehend the intruders, was a letter to Governor Shirley from Mr. Delancey, declining their proposal of last winter of having the decision of their controversy, relating to the partition, to disinterested referees; but early in the spring, a committee under that government protected by men in arms, began surveys for towns west and north-westward from Sheffield, and within twelve or fourteen miles of Hudson's River. These transac-

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\* Mr. Kennedy did not succeed entirely to his wish. To the bill there were many popular clauses, for the Assembly would not impose any rent upon the old patents that had been free from them before.

tions were reported to Mr. Delancey, by persons who conferred with the committee both at Sheffield and Springfield, in a letter of the twenty-ninth of May, and his silence at this session upon a subject so interesting to the proprietors of the manors of Livingston and Renselaerwyck, as well as many others in the north country, who beheld the rapid growth and aspiring spirit of their eastern neighbours, administered to censure and discontent. It is some proof, if our intelligence was true, that the committee were themselves conscious of a defeat of title in their principals, that they made presents of cultivated land to such of the tenants as were willing to contest the title of their landlords, and sold the residue at the low price of but two shillings lawful money per acre.\* One of the prisoners was a workman taken from the casting of cannon ball at the Ancram furnace for the King's army; and that the service might not suffer, Governor Shirley wrote to the judges, requesting that he might be bailed. It was no sooner read than they declared, that this interposition of the Governor's was of itself a good reason for holding him in close custody. This anecdote is recorded, not to expose their ignorance of a prerogative vested by law in the King, whose letters against law and right are doubtless to be disregarded, but to show the extreme jealousy of the high-spirited descendants of the men who had curbed the tyranny of Charles I.

That Mr. Shirley, whose regiment with Sir William Pepperel's, had passed by us up the river on the twenty-fourth of June for Niagara, censured the tardy proceedings of this colony, when he arrived at New-York on the second of July, and from which he departed two days after, was universally known.

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\* The author accompanied Mr. Robert R. Livingston on this journey. On the 16th of May they met Brigadier Dwight, Colonel Choat, and Major Hawley at Sheffield. They had a vote of the General Court, authorising them to make grants west of Sheffield and Stockbridge, as far as to the province of New-York. They could not be dissuaded from prosecuting their surveys under so dangerous and indecisive a power, being under instructions. They refused giving a copy of the vote.

How well it was founded, is left to the reader to determine. The Speaker's letter to the agent of the sixth of July, was doubtless intended as the justification of their proceedings. "By our last advices from the westward, Major General Braddock was on his march from Willis's Creek, within about fifty miles of the Ohio; his men well and in high spirits. On the fourth instant, Governor Shirley set out from this place for Albany, his men chiefly gone before, intending with all expedition for Niagara. This little army consists of his own and Pepperell's regiments, joined by five hundred men from New-Jersey, and five hundred more proposed to be taken from Major General Johnson's command; so that this union will of course carry into execution the clause and article of war you sent us, and show its effects. The enterprise to Crown Point has so thoroughly engrossed the attention of the House, that they have not been able to apply themselves to the affair of the Jersey line. The provincial forces of this and the eastern colonies, are on their march for Albany, in order with the utmost despatch to proceed to Crown Point, under the command of Major General Johnson, who, it is said, has engaged a good number of Indians to attend both armies, and I am in hopes by October next, we shall be in possession of all the settlements they have made on his Majesty's lands. This colony has, on this occasion, exerted its utmost, having in conjunction with the colony of Massachusetts Bay, furnished the whole train of artillery, amounting to an expense of ten thousand pounds currency, the other colonies having furnished no part thereof."

It must, however, be remembered, that one motive to the zeal of the party who had so long predominated in the province, was taken away from the moment the news arrived in March, that Sir Charles Hardy was coming out to take the reins. Their disgust could not be concealed; Mr. Delancey had the mortifying prospect of descending to the bench with a disputable title, and the members were not without their fears of a dissolution, from the firmness of the

administration respecting the permanent support, the rejection of their address to the King, the unaccountableness of their act respecting the Jersey line,\* and the inattention of the Lords of Trade to their impeachment of the late Governor. Add to this, that the dissensions respecting the College had spread through the colony, and endangered the seats of several members;† and that the Delanceys were not a little chagrined, both with Mr. Shirley and General Johnson. The former having preferred Messrs. Peter Van Brugh Livingston and William Alexander, to Mr. Oliver Delancey, for agents in the purchase of supplies for the Niagara expedition, and the latter being a partisan of Mr. Clinton's, and therefore not paid, and hated the more, because favored by General Braddock, in consequence of the patronage of Mr. Shirley. Not to mention that Shirley had expressed himself to the Lieutenant Governor with a tartness not easily to be forgot, though it was necessary to guard against his attacks; add to this, after the precipitation of the act providing for the service by three readings in one day, and the stimulus respecting Mr. Kennedy, an opposer of that bill, and the promoter of another sent from the Council to the House for the easier recovery of the King's quit-rents, was ascribed.

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\* To weaken the opposition, Mr. Delancey had granted an additional charter, enabling the Ministers, Elders, and Deacons of the Low Dutch Church of New-York to choose and maintain a professor in the College of their persuasion, and on the 12th of June, the Governors petitioned the Assembly for the money which had been raised and put into the hands of the Trustees, but it was carried by a majority of two, to postpone the consideration of their request to the fall of the year.

† Mr. Charles's letter of 25th of March, 1755, had utterly subverted the confidence of those who relied on the Lieutenant Governor's opinion concerning the proper mode of settling that controversy, concerning the hearing at the Board of Trade on the act for submitting it to the King's decision, he writes, "their Lordships declare that they look upon the said acts as waste paper, and that the settlement of the line in dispute can no otherwise be made than by Commissioners from the Crown.—Again, 2nd June:—"I now find that their Lordships have agreed in a Report against the act as ineffectual to the purposes for which it was intended, and that it will be in vain to oppose the Report in Council."—And he importunes the House to provide for the expense of a commission, as he had often before. for names to be prepared for commission.

At the close of this meeting, Mr. Richard, Mr. Walton, Mr. Cruger, and Mr. Watts, all members for the capital, were joined to the speaker at his request of aid for managing the future correspondence with the agent.

The account of the death and defeat of General Braddock on the ninth of July, reached us on the tenth day after, and gave a shock more easily conceived than described.

Common sense suggested, that as the attempt against Fort Du Quesne was thus become abortive, reinforcements were necessary to give success to the two other enterprises against Niagara and Crown Point; and especially to the former: yet when the Assembly met on the twenty-second of July, Mr. Delancey adjourned them to the fifth of August, and then delivered a speech for fresh levies of men in such animated terms, as increased the astonishment at his silence a fortnight before, and how he could then think it for his Majesty's service that the members should be dismissed, and now utter himself that "the safety and being of the British colonies are near a crisis. Nothing will tend more to animate our troops, than our proceeding immediately to raise an additional number of men to join them, nor can any thing be more effectual to confirm our Indians in their dependence on us, than to show them we have strength sufficient to protect them, to defend ourselves, and to chastise our enemies. Let it be exerted with the utmost vigor. As the *provincial troops* are already on their march, any assistance we give *them* must be sent without the least delay; and therefore if a sufficient number of volunteers do not offer, it is necessary drafts should be made, and the succours be despatched with all speed. I recommend it to you to provide funds. I have thought of three, a poll tax of ten shillings or more on every slave from fifteen to fifty, an excise upon tea, and a stamp duty. If they are insufficient, make an addition to the tax on estates real and personal."

Lieutenant Governor Phipps, of the Massachusetts Bay, had before urged an augmentation of the army destined to Crown Point, and his letter was now communicated to the Assembly, and led to the real object of the message; for the House instantly signified their concurrence for the reinforcement of that body, and a bill was brought in for a new emission of ten thousand pounds to defray the expense, which was sent up to the Council on the 12th of August. Objections were now immediately started to it, and amendments proposed. Four hundred men were to be raised, at fifteen-pence a day. If volunteers did not offer, the quotas in all the counties, except New-York, were to be drafted by ballot; but in that, the Captains had authority to pick out the individuals. Nothing could be more essential; and it was imputed to design, to gratify private revenge, excited by the opposition to the College as well as to influence at the new elections, which every body imagined would take place as usual on the arrival of the new Governor. The Lieutenant Governor, who had set his heart upon the bill, intruded upon the Council the day it came up, and pressed their assent with an indecent freedom. The intended amendments could not have been rejected, without exposing the Lower House to the resentment of the people; and the Council, confident of success, resisted the Lieutenant Governor's importunity, and resolved to send them down. But, determined that the bill should pass as it stood, or be lost, he immediately published the secret which Mr. Shirley had incautiously trusted to him, and which the Council had engaged not to divulge before their amendments were adopted; and that very afternoon sent the General's letter to the House, of the 7th of that month, informing him that he had ordered Colonel Dunbar, who commanded the twelve hundred regulars that escaped on Braddock's defeat, to march immediately to Albany; and from that moment the augmentation of the provincial forces gave place to a vote for refreshing and transporting the regular troops; and two days after. the Assembly

was adjourned to the 26th of that month, and afterwards to the 1st of September.

But to guard against any disadvantageous impressions in England, care was taken to despatch a letter, on the 12th of August, to the agent, which, after mentioning Braddock's defeat, the loss of eight or nine hundred men, and the artillery and baggage. "*for want only of a little caution,*" it adds: "What steps the southern colonies will take in this juncture, I know not. As for us, we can give no assistance, being engaged in an expedition against Crown Point; and this disaster of General Braddock's, has laid us under a necessity of reinforcing our troops on that expedition, at the expense of ten thousand pounds more. Mr. Shirley is gone to Oswego, with about three thousand men, to endeavor to seize Niagara, and interrupt the communication between Canada and the Ohio, through the Lake Ontario: but its success may now justly be doubted, as the French will be able, from the forces on the Ohio, to strengthen Niagara. In this disjointed state of our colonies, I fear we shall never be able to do any thing to effect. If the government at home will form us into an union, (for here I fear it never will be done,\*) I make no doubt, but by a little assistance from Great Britain, in money. shipping, and warlike stores, we shall be able to drive this restless, treacherous, and savage enemy, from this continent."

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\* On the 15th of this very month of August, Mr. Charles complained that no copy of the Albany plan of last year had even then been transmitted to him. The answer to this letter, of 4th November, perhaps assigns the reason. "The plan of union concerted at Albany, and sent home last year to be enforced by Parliament, we might object to; but a union appears so absolutely necessary, that we shall throw no obstacles in its way. As to the funds you hint at for American affairs, to wit, a stamp duty, and a duty on foreign molasses, we conceive it will be best for each colony to be left at liberty for raising and supplying their quota of money for general service, in such manner as they shall find will be most for their ease, though we have no objection to a duty of a penny sterling per gallon on foreign molasses, to be collected in each province, and applied towards making up the quota of each province, where collected for the general use of America; but a stamp duty we apprehend would be burdensome."

Whether this letter was or was not despatched before Mr. Shirley's letter on that day was communicated to the House, there certainly was art in leaving the agent to make a use of it, for the credit of a colony that neither contributed this reinforcement it boasts of, either to the western or northern expeditions of the year.

But a very different spirit prevailed in the eastern colonies; for, upon the southern defeat, Massachusetts added eight hundred and Connecticut fifteen hundred men to the forces already under Gen. Johnson's command; and this compelled Mr. Delancey to defer any further adjournments. When he met the Assembly again, he counterfeited the highest approbation of the zeal and vigor of our eastern neighbors, and urged the House (the reader, doubtless, imagines) to increase their levies in the same or a greater proportion. But let us take his own words. "I do most earnestly recommend it to you to take measures *suitable to this occasion*. It would be a most sensible mortification to me to find this province backward in bearing their share in a matter so nearly touching their honor, their interests, and perhaps their being. This province has *already done much* for their security, and contributed their *full quota* to the first plan of the expedition. Go on, then, to accomplish a work already begun. Exert yourselves so as that we may appear with credit, and that we may, by the blessing of God, have reason to expect a happy issue to our undertakings in so just and righteous a cause."

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## CHAPTER V.

*From the time of Lieutenant Governor Delancey's ceasing to administer the government, to the arrival of Sir Charles Hardy as Governor.*

SIR CHARLES HARDY arrived on the 2d of September, in the Sphynx ship of war, within a few hours

after this message was transmitted to the House ; but by the artifice of Delancey, he was detained on board till the next day,\* when his commission was published with the usual solemnities, and followed by an entertainment, bonfires, illuminations, and other expressions of joy.

Sir Charles, whether self-moved, or led by the advice of the Lieutenant Governor, who had him to himself the whole preceding evening on board ship, apart from the Council, repressed all disagreeable intimations for the present ; and on the fourth, sent a short message to the House, which, to those who were attentive to the artifices of the day, portended, what was soon after manifest to every body, that he had not talents to govern without a leader. He applauded Mr. Delancey's last message, though he certainly had not time to discern its true end ; applauded their alacrity in raising supplies ; and in a word, after a declaration of his hopes that they would give some further assistance, concluded with a compliment to the Lieutenant Governor, leaving them to proceed upon his request.

The House, however, resolved, that it was too late in the season to raise men for the assistance of the Crown Point army, but that they would give eight thousand pounds towards two thousand men then in part levied in Connecticut for that purpose ; and immediately ordered in a bill to strike money to that amount ; and then presented the new Governor with an address, congratulating him upon his arrival ; gently informing him of the custom of new elections at such a juncture ; declaring their satisfaction in a dissolution, if he thought it consistent with the King's

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\* The Council were met to receive him, when Chief Justice Delancey obtruded, and offered to be the bearer of a message to the Governor, that the militia could not be drawn up to receive him till the next day, and requesting that he would postpone his landing in the interim. They tamely consented, instead of reproving him for the intrusion.

interest and the security of the colony; apologizing at the same time for the tardiness of their compliments, by the importance of their business, and an attention to necessary speed; and concluding with a testimonial of the upright intentions of his predecessor.

Sir Charles, though he had Mr. Pownal then about him, and from whom he could be well informed of the state of our parties, and had himself been guarded by an address communicated under cover, the day after his arrival, by the free pen of an anonymous writer, who had maintained a weekly paper for a year past, under the title of ‘*The Watch-Tower*,’—thanked them for their congratulations; expressed his pleasure in their professions of loyalty; promised an attention to the public weal; took encouragement from their applause of a Governor who regarded the King’s service and the prosperity of the colony; thought their willingness to appeal to the people, a proof of their consciousness of their own rectitude, and applauded their despatch in the business before them.

On the 11th of that month, the Governor passed the bill for eight thousand pounds to Connecticut, with another, which also originated in the Lower House, and three others which took their rise in the Council; and then put an end to the session.

Nothing was known, till the day after, of the attack upon the provincial camp at Lake George, and the repulse of the French, and the capture of Baron Dierhau their General. Upon the first news of that action, which happened on Monday, the 8th of September, Sir Charles determined to visit Albany, and forward the Connecticut reinforcements. He took with him the Lieutenant Governor, Mr. Horsmanden, and Major Rutherford of the Council, with Mr. Pownal, and sailed on Sunday the 14th. Gen. Johnson, who left Albany with the artillery on the 8th of August, had arrived at the south end of Lake George but a few days before the French army appeared,

and had only felled a few trees on the land side of his camp.

The Baron had collected about three thousand men at Crown Point, and led a detachment of two hundred regulars, six hundred Canadians and as many Indians, up the South Bay, intending to pass on and lay waste the settlements down to Albany; but near Fort Edward, turned back, with hopes of cutting off that part of the army then fourteen miles higher up the lake. He was first met by a party of about one thousand men, a few miles from our camp. These he drove before him, as well as a second detachment sent out to support them; and by a very great error, instead of storming the log breastwork, he halted, and scattered his irregulars at one hundred and fifty yards, kept up a fire of musquetry till the camp recovered from its surprise, and began to play upon them with artillery.

Wounded, and deserted by all but his handful of regulars, he thought of nothing now but returning to his boats at South Bay, but was pursued, wounded again and taken. A detachment of two hundred men from Fort Edward arriving at this instant, pursued the flying army, and completed the repulse before the dusk of the evening. Sir William Johnson receiving very early a wound in the thigh, the defence was conducted by General Lyman of Connecticut. The loss of the enemy, though much magnified at that time, was afterwards found to be less than two hundred men. Our Indians bore no part in the conflict, and soon after made the circuit of Albany, in their return to their own castles on the Mohawk river. All the Crown Point expedition ended in the construction of another fort, distinguished by the name of William Henry, while the French were erecting another at the pass of Carillon, or Ticonderoga.\*

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\* The Indian word is descriptive of a point at the confluence of three waters. *Ticon* is a corruption. To preserve the Indian pronunciation, it should have been written *Tjeonderoge*.

The Niagara expedition was still more unsuccessful. Nothing was effected except the preservation of Oswego, where General Shirley arrived on the 21st of August. After building the vessels, the want of provisions at that distant port retarded the army till the inland sea of Ontario, which they were to navigate, became too boisterous for a safe transportation of the troops; and the General, having constructed a new fort, and made dispositions for the safety of that post, retired on the 24th of October, taking his route to Albany, where Colonel Dunbar had just brought the remains of Braddock's army to be wintered,\* and thence to New-York, to a congress of Governors and principal officers of the army, to concert a plan of operations for the ensuing year.

The night of Tuesday the 18th of November, was rendered memorable by an earthquake. The moon was at the full, the sky bright and perfectly calm. About two minutes after four in the morning, a rumbling noise was succeeded by jarring vibrations for four or five minutes. The shocks appeared to be not undulatory, but horizontal. The house the author was in cracked, and the windows rattled, but no fissure was made in the walls, nor did a brick fall from the chimneys.

The Speaker's, or rather the committee's letter of the 4th of November, under his signature, to the agent, after mentioning General Johnson's army, observed, that "they had got no farther than Lake George, and I greatly fear will not reach Crown Point this winter. The French, it seems, impatient of our delay, met our forces at that lake, on the 8th of September, and endeavored to storm their camp, but were repulsed with considerable loss. Their chief commander, with many others, were taken prisoners, and their next, with six or seven hundred men, were killed upon the spot. Why this victory was not pur-

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\* They passed by the metropolis in thirty-three transports from New-Jersey, but not before the 8th of October.

sued, and a proper advantage made of it, I cannot as yet account for." After reporting, that the second in command was at the defeat of Braddock, he adds—"Surprising diligence on that side!—but what term to give it on the other, I am at a loss. As to Governor Shirley, he is returning without proceeding further than Oswego. What retarded his operations, I cannot yet learn. Sir Charles Hardy, our Governor, arrived here on the second of September, and was joyfully received by *our Lieutenant Governor* and our province. On the first news of the action at Lake George, he immediately went to Albany, with *our Lieutenant Governor*, and several of his Majesty's Council of this province; from whence he is not yet returned, though hourly expected, and where, it is said, he has been *remarkably assiduous* in forwarding every thing relating to the expedition. We as yet know nothing of his instructions."

Sir Charles did not return to New-York before the 26th of November, nor General Shirley until the 2d of December; the former, on that day to meet his Assembly, and the latter, shortly afterwards, the congress he had convoked.

Sir Charles was now obliged to reveal the disagreeable orders he had received, upon the long-contested quarrel respecting the annual support of the civil list. The moment it was divulged, there remained no further doubt of the truth of the reports from Albany, that there had been bickerings between him and General Shirley, and that Mr. Delancey swayed the councils of the new Governor. With an Assembly at the beck of the Lieutenant Governor, he saw the propriety of surrendering himself into his hands, or of entering into a quarrel, which, considering the exigency of the hour, endangered both his credit and his interest.

He told them plainly, that he was commanded to insist upon a permanent, indefinite revenue; providing in the same law, competent salaries for all the usual officers of government, repairing and maintaining fortifications. annual presents to the Indians, and

for unforeseen contingents attending that service, and in general, for all the fixed and ascertainable charges of government: after which, he demanded their quota towards the garrisons of forts Edward and William Henry, and for a discharge of the arrears that were due to the troops in their pay.

The scheme concerted, was to tack the provision wanted with the payment, not only of what was due to the army, but to the officers of government, who, in consequence of the thirty-ninth instruction, were hitherto unpaid, and thus to create a still greater dependence of the Executive upon the pleasure of the Assembly, who now meant to adopt the practice of paying the officers after the year, as public creditors, instead of securing the payment for services hereafter to be done.

The Assembly, in their answer, declare, that his activity in proceeding to Albany, and forwarding the Crown Point expedition, merited the highest applause; and that the erecting and garrisoning the two northern forts, (for not a word is lisped concerning Oswego,) were "wholesome and well-judged measures." After which they proceed to the grand subject of debate, and warily reply, that they had no convenient funds for an indefinite support, and therefore hoped to be excused for declining a measure opposite to the sentiments of almost every individual of the colony. They added, that they could not help disclosing their concern, that a province so small in numbers, and so cheerful and liberal in supporting the government, was asked to do what others were not; and concluded with testifying great gratitude to the Crown for its eminent favors.

The Governor replied, that "his Majesty having constituted this his province into a government, justly expected a support of that government by a permanent revenue, settled by a law, that shall be indefinite; and as to the funds or means of raising that support, it lies with you, whom I am extremely happy to find sensible of, and so gratefully acknowledging, his Majesty's paternal care and favor."

The House continued sitting until the 23d of that month; and then, after passing several laws, adjourned, without discord, till the holidays were over. The Assembly sought no occasion for controversy, while the Governor on his part soothed them with hints of his disapprobation of the orders he had delivered from his master, and with intimations of his unwillingness to take umbrage at their non-compliance.

By this conduct, and the help of the prevailing party, he grew popular, while the General of the army, by the acts of the same junto, was defamed.

Mr. Shirley continued his head-quarters at New-York till the 21st of January, when he set forward to Boston, to accelerate a winter expedition against Ticonderoga, which he had planned after his main scheme for the operations of the next campaign was adjusted: and Major Rutherford and Captain Staats Morris were despatched with copies of it to the minister.

This Congress opened on the 12th of December, and consisted of the General, Sir Charles Hardy, Lieutenant Governor Sharp of Maryland, Mr. Morris of Pennsylvania, Mr. Fitch of Connecticut, Colonel Dunbar, Colonel Peter Schuyler, Major Craven, Sir John St. Clair, and Major Rutherford.

It soon transpired, that the General intended to drive the French from Frontenac and Toronto, two forts on the north side of Lake Ontario, gain a dominion of that sea, and cut off the communication between Canada and the interior dependencies at Niagara, Fort Du Quesne, Detroit, Michillimackinac, and the posts on the waters of the Mississippi. By whom the resolutions of the council of war were first divulged, was never discovered; but very soon after the Governors were gone home, one Evans, the author of a map of the middle colonies, in print asserted the title of France to the very country proposed to be invaded; and every body knew that this man was patronized by Mr. Pownal and the partisans of Mr. Delancey. These gentlemen, as Lieutenant Governors, the former of New-Jersey, and the other of

New-York, were piqued at not being invited to assist at the grand deliberations of the day, and took all opportunities to revenge the General's resentment of their intrigues, when at Albany—to sow discord between him and Sir Charles Hardy—undervaluing his services on the western expedition, and magnifying General Johnson's defence at Lake George, of which they had before spoken slightly, as the achievement of a hero and the saviour of his country. And thus the man, who, when first noticed by Mr. Clinton, was treated with contempt for adhering to that Governor, could not obtain the payment of a just debt often demanded from the Assembly, was of a sudden introduced into the capital with the pomp of a triumph. A crowd went out to meet him, when he made his entry, surrounded with coaches and chariots, into a city illuminated to his honor, though the General, whose interest he came to solicit for the next year's command, had a few days before arrived from Albany, and landed almost without observation.

Before Mr. Shirley left New-York, he proposed a winter expedition to surprise and seize the post of Ticonderoga, and Sir Charles communicated the secret to his Assembly on the 10th of January, 1756, and besought them for their contributions.

The House, after three days, declared it to be a hopeless project, unless the General would, instead of two, send four hundred regulars along with the provincial troops, and muttered their discontent at the proportion to be supplied by the Massachusetts Bay. The General, through Sir Charles, informed them that all the troops under Colonel Dunbar and Lieutenant Colonel Gage, amounted to but six hundred, and that so many as they wished for could not be spared, without reversing the plan just settled in the general congress for the ensuing campaign. The Assembly adhered to their first opinion; and the General, a few days after, proceeded to Boston, in order to excite the eastern colonies to prosecute the enterprise without the aid of New-York, and to forward the preparations for the general services of the year.

Pownal returned to England soon after Mr. Shirley went to Boston, and Sir Charles was now left alone.

Before the Governor arrived, it was reported by Pownal, and believed, because his brother was Secretary to the Board of Trade, and a necessary instrument to the Earl of Halifax, who presided there, that a new commission, *durante bene placito*, would be sent out to the Chief Justice, that he might, if he took it up, henceforth be *en bride*. Being at Albany in October Term, the multitude remained in suspense concerning the part he was to act, till the next Court in January was opened.

Mr. Delancey, from the death of Sir Danvers Osborn, asserted his title in all companies, nor did he omit his attendances at any of the jovial feasts and conventions of the profession of the law. His partisans at the Bar had tested the writs in his name to countenance his pretensions, while others inserted the names of the puisne Judges, without his, and some those of all three. The puisne Judges uttered publicly not a syllable upon the subject, though they held their places during good behaviour, through dread of his power over the Assembly, by whom they were supported, though they had privately declared that his commission was extinct. They waited to see what part the Governor meant to take, imagining he would offer Mr. Delancey a new commission, and if he did not, meant to be silent—judging then he must have resigned himself to the demagogues, for the easier management of the Assembly.

The Court opened during the moment of suspense, on the 20th of January; and the hall being much crowded, the Lieutenant Governor made his appearance, struggling through the populace to advance towards the Bench. As the Sheriff's officers called upon the crowd to give way, he stepped forward, with a countenance of anxiety and confusion, until Chambers and Horsmanden, the puisne Judges, took him by the hand with a cringing courtesy, and placed him between them on the Bench, where he continued till two prisoners, one charged for a murder and

the other for a theft, were arraigned and taken from the Bar.

His dominion over the Governor was no longer doubted by most men, though it was still whispered by a few, that Sir Charles took this conduct for a bold attack upon the prerogative: but this continued only until the 4th of February.

That day was appointed for arguing a demurrer to a bill in Chancery before the Governor. The author was one of the counsel in that cause, and they waited long for the Chancellor's appearance, not suspecting that the perturbation of his mind was the cause of his absence. While the suitors were left below, they were invited into his private apartment, and a conversation ensued, of which the author made a minute, and he therefore transcribed it, as being too characteristic of Sir Charles to be omitted.

Addressing himself to the counsel on both sides, Mr. Murray, Mr. Smith, Mr. Nicoll, and the author, he said, "I beg pardon for detaining you, gentlemen. Does this matter turn upon a point of law?"

*Answer.* It is a demurrer to a bill, and raises the question, whether the complainant's relief is not to be at common law?

*Sir Charles.* I desired the Chief Justice to be here, and he is not come. I can't take upon myself to say I understand the law.

*Mr. Smith.* Few Governors will; but it is a branch of your office, Sir Charles.

*Sir Charles.* I have been a Justice of the Peace in England, but know nothing of the law. My knowledge, gentlemen, relates to the sea: that is my sphere. If you want to know when the wind and tide suit for going down to Sandy Hook, I can tell you that. How can a Captain of a ship know any thing of your demurrers in law?

*Mr. Smith.* A Master of the Rolls is wanting, with an appeal to the Governor and Council.

*Sir Charles.* I think so too; but will the Assembly support one? May I expect success if I try it?

*Mr. Murray.* They don't love to part with money; and all agree, that he could not flatter himself with any liberal provision for a new officer.

*Sir Charles.* Can't you settle this matter, gentlemen, among yourselves? I am sure you can, better than I can for you.

*Mr. Smith.* No, Sir; we are at variance, and must be determined by your opinion.

*Sir Charles.* Can't you leave it to arbitration?

*All.* Not without the consent of our clients, and that we can't advise.

Mr. Delancey came in, to the great joy of the Governor, and the morning being spent, it was proposed to adjourn the hearing to another day. At parting, Sir Charles said, "I beseech you, gentlemen, to bring these kind of questions before me as seldom as possible. If you ever dispute about a fact, I can search the depositions, and perhaps tell who has the best of it; but I know nothing of your points of law." The cause was afterwards debated, and a decree pronounced by Mr. Delancey, who dictated the entry to the Register. The Governor, who awkwardly sat by, interfered only to pronounce an "Amen."

The Assembly now instituted two bills for the support of government—one to discharge the arrears of the officers, tacking sums for other services, and another providing for the ensuing year. By the former, Mr. Delancey was to receive three thousand seven hundred and eighty-seven pounds sixteen shillings; his brother Oliver, about four hundred pounds; the agent, nine hundred and fifty-four pounds seventeen shillings; the Judges, their arrears for two years; and the Governor, five hundred pounds for his voyage to Albany, and two hundred pounds more under the name of expenses in transporting presents to, and victualling the Indians at, that place; and the latter was to operate as a confirmation of his title to the Chief Justice's commission. by a salary for the current year. This last was sent to the Council on the 30th of January, and the former followed five days after it.

Possessed of these bills, the Council rejected a favorite five pound act; and the very next day, the Assembly played off their old artillery against Mr. Kennedy, by a message to the Governor against the seizure of the gunpowder disputed, and still undecided, in the Admiralty, and desiring him to complain of that as an injury to the colony, in a representation to the Board of Trade. The Council, who were stimulated to the rejected bill, desired to know the state of one of theirs, to prevent supplies of provisions and warlike stores to the French; and were answered, that conceiving it to be impracticable to execute it, they declined any further proceedings upon it.\*

Before the debt bill and that for the annual support went up, the Governor had requested the levy of one thousand men for the Crown Point expedition, and the House voted to raise and supply them; but halting to know the fate of these bills, and doing little for several days, while their party bills were in suspense in the Upper House, Sir Charles, on the 16th of February, animadverted upon their delays, and pressed for powers to detach the militia, if volunteers did not offer. It was three days after that before the quota bill made its appearance in the House; and when it had a second reading, they desired leave to adjourn from week to week, declaring that they could not proceed further, till they knew the resolution of the other colonies concerning the intended enterprise.

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\* There has never been any process of outlawry in this colony, nor for want of the proper courts of law, as I can learn, in any of the rest; and yet, till the 16th of February in this year, we had no law to oblige a single partner to answer for a joint debt without his fellow-contractors. By the act now, he is compellable to plead; and if the plaintiff prevails, he recovers against the company's lands and goods, but cannot have execution against the bodies of the absent partners, nor touch their separate estates. That this novelty came into our code at so late a day, and has been since but seldom practiced upon, is a proof, especially considering the scant limits of the province, of the narrow sphere of our commerce, or of the uprightness of our merchants.

In this situation the Governor withheld the warrants for levying the troops; and being moved by the distresses on the frontiers of Ulster and Orange, ravaged by the Indians, he earnestly demanded their support for a force in conjunction with New-Jersey, to give security to those borders. To gain time, the turn given to this message, was a resolution to pay what may be deemed to be our quota of an army of one thousand men, to be raised by us, New-Jersey, and Pennsylvania, towards an expedition against the Indians; and he was desired to concert what was proper with those governments.

Sir Charles, the next day, repeated his instances for their despatch of what respected the joint designs against Crown Point, and informed them, that Massachusetts and Connecticut were levying men far beyond their proportions, that the service might not suffer by the defaults of any of the southern provinces; and he now insisted upon the augmentation of their intended levy of one thousand men.

From the 4th to the 16th of March, the Assembly artfully met only to adjourn, and then voted seven hundred and fifteen men in addition to the one thousand, but that four hundred of these should be employed in an offensive war against the Indians; and ordered proper clauses for these purposes to be added to the bill which they had so long retarded, under pretence of waiting for the co-operation of the other colonies respecting the Crown Point expedition, and which, by uniting the provision for both objects in one bill, was still longer delayed.

The cruelties in the mean time perpetrated in Orange and Ulster, excited clamors in that quarter, and compassion every where else, and the House was censured by a publication in the Gazette, of the 15th of March. Doctor Colden, who lived in Ulster, being suspected to be the author, the printers were summoned; but the obnoxious composition being traced to Mr. Watkins, the wrath of the House vanished into smoke, for he being an Episcopal clergyman, and the dissention running high between church and dis-

senter concerning the College, he was not even sent for to be reprov'd till the next autumn, though the two printers were ordered to be committed. This attack, however, quickened their motions; for on the 20th of March, they sent up their quota bill for raising seventeen hundred and fifteen men.

It lay eleven days with the Council, where it was opposed by Mr. Smith and Doctor Colden, who came to town during the alarms occasioned by the Indian irruptions into Ulster. Before this time, the debt bill was in the Governor's hands, \* but stigmatized by the protest of Messrs. Smith and Colden in so pointed a manner, that Sir Charles was fearful of giving it his assent. This was at length forced by the management of the House, who allowed a bounty of five pounds per man for the volunteers against Crown Point, but provided only thirty shillings for those who were to act in the harder service against the Indians; and besides, those troops were to be disbanded in forty days, and not at the Governor's discretion—a confidence reposed by the province of New-Jersey in Governor Belcher. The majority of the Council adhered to the objections of Doctor Colden, who spoke both his own and the Governor's sentiments. Mr. Delancey, in this delicate situation of affairs, thought proper to absent himself; but finding means, by a member of the Assembly, to inform the Governor that this bill might be altered, if the debt bill was passed, his Excellency, pressed by the advanced season of the year, engaged to pass the debt bill; and the other being sent down, privately amended so as to take away his own and the objections of the

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\* "We are sitting still. The principal money bill, which is for paying the debts of the colony, and among others, the salaries for the several officers of government for the time past, has passed the Council, but has not yet received the Governor's assent, and is therefore as yet in suspense. By the next packet, I may perhaps be able to inform you further, particularly with respect to the Jersey line, which is still under consideration." *Mr. Jones's letter to the agent, 23d February, 1756.* And on the 20th of July, 1756, he adds, "I have now the pleasure to acquaint you, that he has passed it."

Council, the Governor sent for both Houses the next day, and passed all the bills ready, both parties being so well pleased with the late barter, as to part on an adjournment to the 27th of April.

The opposition to the debt bill cost Mr. Alexander his life. He ventured out for that purpose in a paroxysm of the gout, took cold, and died the day after the session. And from that time the Governor, who had such demonstrative proof of the devotion of the Assembly to the Lieutenant Governor, as to obstruct the levies for the service until his interest was secured, in defiance of an instruction, and at the risk of the royal resentment, tamely resigned himself into his hands.

It must, in justice to Mr. Delancey, be added, as the sequel will evince by his policy, the colony obtained a victory over the government as well as the Governor; for after that day, the Ministry gave up their objections to the popular project of the anti-Cosbyan patriots, for holding the officers dependent upon the annual support of the Assembly. But this Assembly were nevertheless culpable, for slighting one of the most favorable opportunities for settling our contested limits, which have since produced such scenes of confusion and distress. Sir Charles, on the first of January, communicated to the House an instruction, urging a provision for one half of the expense for adjusting the partition line with Jersey by Commissioners; and at the same time informed them of General Shirley's readiness to procure the consent of Massachusetts Bay, over which he then had a prevailing interest, to join in a like commission for ascertaining our eastern boundary. Intoxicated by the spirit of party, they lost an opportunity to give peace and safety to thousands, by a provision for terminating that, and the controversy we had also with New-Hampshire: but it was Mr. Delancey's ambition rather to create than to lessen dependencies on his will; and the neglect of education left a hard, wicked colony, exposed to his arts.

The delay occasioned by the late stratagem, and the hourly expectation of the General from Boston,\* obliged the Governor to call upon the Assembly before the end of the month, for power to supply the want of volunteers by detachments, while the clog upon the operations of the 400 men who were to be employed against the Indians by the quarrels between Governor Morris and the Pennsylvania Assembly, prevented even the issuing of the military warrants for those recruits. Sir Charles, therefore, asked for authority to detach men, that the 400 might be joined to the quota for the Crown Point expedition, that provisions might be collected for troops expected from England, the rates of land carriage ascertained, and the northern militia relieved from unequal burdens in the general service.

Within five days, laws were enacted to expedite the levies, and prevent the exportation of provisions, and the bill setting the price of transportation, brought in by Mr. Watts on the 4th of May, was the same day sent up to the council, and on the next passed by the Governor. A velocity of proceeding, which if it demonstrates zeal for the service, proves that it sprang from very recent causes, which are left to the conjectures of the reader.

But this ardor to facilitate Sir Charles's zeal, shortly after abated upon the disgust he gave to the merchants, by his measures against the illicit commerce which had been long driven with Hamburgh and Holland, and several seizures were now made by his order, which they ascribed to his loss of one of the independent companies. Nor was the dependence upon him so necessary, it being reported that the Crown had relinquished the project of an indefinite support. Besides this, he was eclipsed by the new lustre of

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\* He arrived here 20th April, and sailed the 2d of May for Albany. Sir Charles's Message was on the 29th of April.

General Johnson,\* who was knighted for his services, and our forces were abated by the arrival of General Webb on the 7th of June, and the Royal American officers on the 15th, with General Abercrombie, the two regiments of Otways, and the Highlanders.

On the 29th of June, Sir Charles informed the Assembly, that the Earl of Loudon was coming out to take the command of the army, and called upon them for aid in recruiting the two regular regiments with soldiers, who were to be discharged at the end of the war, and have each two hundred acres of land free from quit-rent for ten years.

He added, that the sum of one hundred and fifteen thousand pounds was given by Parliament to be distributed by the King among the New-England colonies, this, and the province of New-Jersey. That his Majesty expected fresh aids of men for the operations of the year; the reimbursement of masters for servants enlisting in the army, and the prohibition of commerce with and all supplies to the enemy.

The House resolved, That the colony had exerted itself, by furnishing its proportion for the Crown Point expedition, the defence of the western frontiers, the march of many thousands of the militia on the attack of Baron Dieskau, and this year on alarms to support the King's troops. posted to the westward, where a party was cut off;† and again to preserve Fort William Henry when on the point of being abandoned by the garrison, composed of Massachusetts and Connecticut troops. That we raised first 800, then 500, and afterwards 400 men, that £20,000 had been granted for fortifying the capital. That a common fund ought to be established. That we had

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\* His Majesty has ordered 15,000*l.* to New-York, 5000*l.* to Major General Johnson, for his services, to whom likewise a commission is issued for the superintendancy of the Indian affairs, with a salary of 600*l.* per annum. *Vide agent's letter, 13th March, 1756.*

† A small garrison at a block-house, under Lieutenant Bull, at the Oneida portage, where Fort Stanwix was afterwards erected, was abandoned in March.

given £5000 to Virginia, and as much to be disposed of by General Braddock, and that till such an establishment, the colony was unable to do more. But they nevertheless approved of the payment for enlisted servants, and were for continuing the laws against supplies to the French, and these resolves they ordered to be published in the Gazette.

About the same time Sir Charles proposed to them an act for vacating the patents of Kayaderoseros, Cannojohary, and Oriskany, which has been represented by the Lords of Trade, as obtained of the Indians by fraud, and that the declension of the Indian interest was owing to their want of satisfaction.

Upon this subject they suspended any resolution, till after this next meeting. considering it as a matter requiring most mature deliberation; and the day after (9th July) they adjourned, leaving a committee empowered to welcome the Earl of Loudon, who was daily expected, to thank him for engaging in the service, and to provide for his honorable reception.

This attack on the patents was ascribed to Sir William Johnson, and gave general offence, and it was fortunate for the proprietors, that the Delancey family were interested in Oriskany, a very valuable tract, embracing the banks of the Mohawk River, near the great transportation to the waters of the Wood creek.

When the new Generals arrived at Albany, Mr. Shirley returned on the 4th of July to New-York, and Sir Charles on the 11th went up the river with Mr. Delancey and Mr. Chambers. Three days after, the news arrived that war had been declared against France. Mr. Shirley waited till the arrival of the Earl of Loudon on the 23d, who brought Mr. Pownal with him, and repaired to Albany on the 26th; and on the 1st of August Mr. Shirley sailed to Providence for Boston, and thence to England, and was followed a fortnight afterwards by Mr. Pownal, who had the promise of his government.

Sir Charles returned to the metropolis on the 15th of August, disgusted with the Earl of Loudon, who

had checked his intermeddling in military concerns, and denied his request of two independent companies for his guards.

About this time Oswego was besieged, and lost to the general alarm of the colonies. General Webb, who was then posted at the Oneida carrying-place, was in such consternation, that he ordered trees to be felled in Wood creek to obstruct the progress of the enemy, if they should attempt to penetrate that way, and the Earl in equal terror at Albany, pushed on Sir William Johnson with the militia to sustain Webb, and ordered large drafts of others to follow him from Albany and Ulster, and importuned even the southern colonies for recruits. The panic was universal, and from this moment it was manifest that nothing could be expected from all the mighty preparations made for that campaign.

It was at this juncture (24th September,) Sir Charles administered the consolation he had for some time secreted, that the Crown had in effect repealed the instruction to Sir Danvers Osborn, which had given so much offence.

Upon communicating this address of the 9th December last, the Lords were ordered to write, and did write, that the King, conceiving the present Assembly unwilling to receive old claims and pretensions, and declaring that they did not mean to assume a share in the executive, but as he had represented were willing to promote the service of the Crown, was now pleased to allow him to assert to their temporary bills for the support of Government conformable in other respects to the instructions respecting the disposition of public money.

He had before put into the Treasury the share of the Parliamentary donation of £15,000 sterling;\*

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\* It was great negligence to omit upon the first advice of £15,000, the proper representations for the due distribution of it. When Mr. Jones complained of it, the agent pertinently replied 13th of August, 1756. "How was it possible to set this matter right without proper documents to show when the account was exaggerated? I am not insensible of the

and now asked for an augmentation of salaries, a compensation for the militia on the late alarms, quarters for the troops, admitting the grants objected to by the Indians, and recommended, as Mr. Delancey had done before, a stamp duty, an excise upon tea, and a poll tax upon negroes, with such others as the inhabitants could bear with the least inconvenience.

The session continued with the utmost harmony to the 1st of December, when eleven acts were passed for a revenue by duties on imports, an excise on spirituous liquors and tea, to prolong the currency of the bills of credit, for billeting the troops, erecting a stamp office and a new jail, clothing the provincial levies, appropriating the College funds, paying off the last year's arrears of the officers of the government, and providing for the next.

To reward the Governor, and elude the instruction and his receiving presents, they added £240 to the old allowance of £1560, assigning for a pretext the difference of exchange between the time of its first establishment as an equivalent for £1000 sterling, and the present day, and though the independent companies were now embodied with the army, they put into his pocket £400 more, under the name of fuel and candle money for the fort, and by both the support bills gave Mr. Delancey a salary of £300 a year as Chief Justice.

To find an apology for the Governor's disregard of the instruction respecting the prolongation of the paper money, a committee of both houses put into his hands an argumentative address, assigning five reasons for the necessity of that act. Upon the strength of their victory in the establishment of the an-

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present circumstances of New-England; that want of commerce and employment has made them soldiers, that they are, in some measure, become the Swiss of the continent, in which quality they are not unacceptable here, and that they understand how to value their services. But as the military operations of the continent will require the further aids of this country, I cannot doubt that the account will be stated according to the service done and expense incurred, without any undue preference."

nual support by which the Governor was now bridled, having therefore no dread of an immediate dissolution, the House ventured implicitly to confirm, or rather to rid themselves of all further disputes respecting the College, which had kindled such a flame, that several thousands had petitioned\* to be heard against any confirmation of the charter, which the Lieutenant Governor had formerly passed in its favor. That corporation had not only hopes of procuring a law to vest them with the sums raised by the lottery and excise, but of obtaining further aids, and a legislative confirmation of their charter. The consent of the Assembly alone was wanting, for the new Governor had soon after his arrival shown his favorable intentions by a donation of £500 to Mr. Delancey's institution. Its opposers therefore shrewdly conjectured that they could have no hope of erecting a university on the plan exhibited by the bill, formerly proposed, printed, and slighted, and being contented to allow the college half of the money in bank, if the remainder was applied to any other public use. It was agreed in the lobby to repeal the acts by which the whole was engaged for a college, and to divide the stock raised between the party college and the city corporation, for the purpose of erecting a jail, and providing a lodgment for crews of infected vessels. When Mr. Smith was asked in council for his voice on this bill, he said jestingly; "It rids us of a bone of contention, by dividing it between the two pest houses." Both parties triumphed. The friends of the College wanted the money for the erection of the edifice, and their antagonists believed that having stigmatised its illiberal constitution, it would never in future receive any legislative support. Mr. Delancey, who proposed this partition to cement his party in the House, hoped also to repair the breaches upon his popularity without doors, and with the same view or with a disgust at the importunity of his friends

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\* Vide Journals of the Assembly, 18th of December, 1755.

to whom he gave the charter unwillingly, he never afterwards would assist in forwarding the design; often saying, when summoned to their meetings, "that he had contributed enough to it by the loss of his reputation."

If Sir Charles had not been in the scheme of passing the bill, for prolonging the currency of the bills, by which £1800 was applied towards the payment of the officers of the government, of which he had a share, he might have answered the objection of this want of funds, by pointing to the several thousands, now given for a college, a jail, and a pest-house.

But it was expedient that he should "believe all our funds were exhausted, and the £1500 given to the colony, already in part applied for the support of its troops."

The Speaker's letter to the agent, of 13th October, written with the assistance of a committee of the city members, Mr. Watts, Mr. Watson, Mr. Cruger and Mr. Delancey, who took Mr. Richard's place on the 9th, November, holds up a picture of that day. "I acquainted you (2d July) that we were in great expectation of a successful campaign. But as our disappointment is rather greater than that of the last year, for instead of taking Crown Point, the enemy have made themselves masters of the important fortress of Oswego, taken the whole garrison prisoners of war, demolished all the fortifications, carried away all the armed vessels, two hundred whale boats, cannon, provisions and warlike stores; and this, it is said, they did in a few days time—a dishonor to the British name. Oh shameful behaviour of our forces! We have now no footing on Lake Ontario; all is left to the uninterrupted possession of the enemy, who will doubtless dispossess us of all that we have remaining, if not suddenly stopped. As for our forces on the northern frontier, both regulars and provincials, I expect to hear of no action by them, unless the enemy force them to it. If some more vigorous resolutions are not made in England, and seasonably executed, we must inevitably fall a prey to the prevailing

power of France. We live in hopes that a vigorous push will be made for the reduction of Canada, which seems to be the only measure that can secure us. I told you in my letter 2d July, that you should have a just state of the expenses this year. I cannot at present enumerate any particulars, neither does it appear necessary. We emitted £52,000 bills of credit last spring, to be redeemed by taxes on estates, real and personal, which I expect will all be expended in the pay of our forces, and other necessities, attending this state of warfare, before the end of the year. Our Governor has acquainted us with the alteration of the instruction, relating to the permanent salary; but at the same time insists upon a larger allowance than his predecessors have had, under pretence\* of the alteration in value of our currency. How far this may occasion differences between him and the assembly I cannot yet foresee; perhaps my next may inform you. Enclosed you have a note of the general assembly giving their thanks to Messrs. Hanburg and Tomlinson, merchants in London, for their extraordinary care with respect to the money granted by Parliament, and you are desired to wait on those gentlemen with it. The Assembly are now sitting, and when the session ends, I shall write further to you."

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\* The House the very next day, voted on the 14th October, to his Excellency the salary of £1560, and added these words—"which from the strictest inquiry appears to be originally given as an equivalent for £1000 sterling, and in consideration of the difference in the value of the present currency of this colony, from what it was when the aforesaid salary was first settled, the further sum of £240." As this was the first article of a long report then perfected for all the salaries of the year, the Speaker's expression is, singular after such a point had been carried in a committee of the whole House, and gives reason for the supposition, that this correspondence is not always to be depended upon. Flushed with the success against the scheme of an indefinite support, and the necessity of the concurrence of the colony in the measures of the war, it was expedient to raise a belief that harmony depended upon the will of the idol of the party for securing his interest; and the whole letter was doubtless written to make impressions disadvantageous to Mr. Shirley, who sailed from Boston on the preceding 28th September.

The Earl of Loudon, after the loss of Oswego, appeared intent upon proceeding to Crown Point. Sir William Johnson was called to muster the Indians, to co-operate in that enterprise, but whether from an aversion to that new kind of warfare, or from motives of deep and remote policy, these tribes were languid, and but forty-two could be collected. Ashamed of such a handful, thirty-five of whom were the domiciliated Indians of Stockbridge, recruited by Mr. Wraxall, the Secretary for Indian affairs, and just rewarded as Captain of a company of Independents, for his services, as aid-de-camp at the action at Lake George, and to whose blazoned accounts, Sir William owed his knighthood. They were led to Fort Edward by the private route of Sacondaga. The Earl despised their succours, damned the Indian interest as a bubble, and retired to Albany for the winter cantonment of his troops.

Of these he sent a thousand to New-York, dispersed others in the neighbouring provinces, and left a surcharge in Albany, insisting upon new quarters, which gave rise to loud clamors.

The magistrates of the capital had crowded the privates into the barracks, and left the officers, about fifty, to find lodgings for themselves. When the Earl came down in December, he sent for Mr. Cruger the mayor, and insisted that the officers of every rank should be exempted from expense, and to sooth him, alleged that this was every where the custom; and that he had in consideration of our efforts, put the army to inconveniences by so wide a dispersion, but signified, that if he made difficulties, he would convene all his troops here, and billet them himself. The mayor desired time to consult the body over which he presided. The death of his sister made it necessary to apologize for the delay of the answer until her funeral obsequies were performed. But his lordship insisted upon a speedy compliance, and told the committee he would meet them on the subject; and to convince them that free quarters were every where usual, he would assert it upon his honor,

“which (says he) is the highest evidence you can require.” The demand took air; the citizens raved, and the corporation, consisting generally of elective officers, were at their wit’s ends, concerning the course to be pursued. They flew to the governor, but he answered them with reserve, caution, and duplicity. They called a meeting with the Judges and city members. Mr. Delancy did not attend till the second convention, and excused himself from giving an extra judicial opinion, but it was supposed that Mr. Watts spoke his mind in favor of the people. The act lately passed, gave authority to billet first upon inns, and the surplus upon private houses; but supposing the inhabitants were to be paid, authorised the magistrates to rate the allowance. Beyond that, the magistrates durst not interfere through dread of prosecutions. A committee was appointed to his lordship, and another to present a memorial to the Governor, imploring his mediation, and asserting that free quarters were against the common law, and the petition of rights, the Stat. 21. Car. II. and the mutiny and desertion act; and that the colonists were entitled to all the rights of Englishmen. The Governor escaped, for as soon as the Earl saw the opinion of the corporation, he replied to the mayor, who alone was admitted to his presence, “God d——n my blood! if you do not billet my officers upon free quarters this day, I’ll order here all the troops in North America under my command, and billet them myself upon this city.” The magistrates, countenanced by the conscious dread and impotency of the citizens, promoted a subscription to defray the expense, and a calm ensued; but with a general abhorrence of the oppressor, who soon after proceeded through Connecticut to Boston.

That the minister may not impute the loss of Oswego to the colony, Mr. Jones writes to the agent—“You have doubtless by this time heard of the unaccountable loss of Oswego; since which, the enemy have made no further attempts upon us, nor we upon them; so that Crown Point fort remains still in their

hands, and both sides are drawn into winter quarters. What the next summer will produce, the Almighty only knows. I assure you, our situation is now extremely distressing. This province, being the principal seat of the present war in America, is harassed and burdened in all shapes: soldiers quartered upon us without pay—our horses and carriages, some broke, some burned and destroyed by the enemy—our militia, frequently harassed by alarms, now necessitated to make large marches, some to support the army on the north, others to repel the Indians from the western frontiers. Thus harassed, our people cannot attend to their usual occupations, and numbers are soon likely to be great sufferers, and to become a burden to the rest. To this may be added another heavy article of expense, viz. the great number of French sent here from Nova Scotia by Governor Lawrence, and the prisoners taken at the battle at Lake George, in September 1755, with a number of others brought in here, as well by the Nightingale man of war, as by privateers. The expense attending all articles, you will easily see must be very great. Our fifty-two thousand pounds are all called for, and we are obliged to break in upon the present made us by Parliament, which, in this expensive state of things, cannot last long; and unless we have the further aid of our mother country, we must sink under the weight of these excessive pressures. Our session is tolerably well ended, the support bill being put in the usual manner.”

On the 16th of February, 1757, Sir Charles informed his Assembly at Flatbush, that reinforcements were coming out; that the people of the Massachusetts Bay were to contribute, and pressed the immediate levying of our quota; renewed his importunity for money to settle the partition line with New-Jersey and the Massachusetts Bay, blood having been lately spilled in the manor of Livingston; and pursued his object for the vacating of the patents, which he was pleased to call exorbitant grants.

They promised their proportion for the prosecution of the war, to avoid the imputation of being instrumental in their own ruin by tedious delays and resolutions, or an ill-timed parsimony; but waived any provision for the settlement of lines, till they could say with propriety that we had lands to divide :\* intimated that the quit-rents were a proper fund to defray that expense; and respecting the grants, informed him that they were purchased by considerable sums, paid not only to the Indians, but the officers of government, in fees equal often to the value of the land granted; that what he urged, was a proceeding harsh and dangerous, and now not necessary, as the Indians were not obstructed in the use of the land; and that they thought it of more consequence to lay out a line of townships on the frontiers, to be given to settlers without fee or reward; and, as the small-pox then compelled them to sit out of town, they wished to attend only to what respected the war.

They continued together only ten days, and provided for levying one thousand men, to act with four thousand from the Massachusetts Bay, under his Lordship's command, "which," says the Speaker, 26th February, "is our full proportion, according to the *plan of union*, and was all his Lordship demanded."

The sum appropriated for this purpose, was twenty-one thousand three hundred and sixty-nine pounds, twelve shillings and two-pence; and the Parliamentary present of fourteen thousand three hundred and twenty-three pounds, fifteen shillings and three-pence, sterling, which I mention as a detection of the artifices in the reasons given by both Houses for passing the late bill for prolonging the paper currency, and the Speaker's suggestions of the distress of the colony.

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\* A long memorial, drafted by Mr. Scott, to urge the Assembly to make the controversy with New-Jersey a provincial charge, and presented the 13th of February, 1756, was now printed. on the motion of Mr. Oliver Delancey, who was not then become interested as a proprietor of New-Jersey.

## CHAPTER VI.

*From the absence of Sir Charles Hardy, on an Expedition against Martinico, to the second assumption of the Administration by Lieutenant Governor Delancey.*

THIS was Sir Charles's last interview with the Assembly; for after that, he hoisted his flag as Rear Admiral of the Blue, with a command in the expedition against Louisburgh. He embarked on the 2d of July, at midnight, and left the government in the hands of Mr. Delancey, who took the oaths the next morning. The inattention of the Assembly at this time to the boundaries of the colony, was very inexcusable. The Jersey proprietors took advantage of it, and urged their contempt of the royal instruction as a reason for ordering a temporary line, according to the observations of 1719, as the partition, until this colony provided a moiety of the expense for settling the boundaries by Commissioners.

For the operations in this quarter, his Lordship left an army of five or six thousand men, under the command of General Webb; two thousand three hundred of these were posted at the south end of Lake George, fifteen hundred at Fort Edward, and the residue were scattered at Saratoga, Stillwater, Albany, Mount Hanson, and at Herkimer, in the country of the Mohawks. There were some who censured his leaving the frontiers in so weak a state of defence, and still more the wide dispersion of the troops; conceiving that they all should have been divided between the two great carrying-places on the north, from Hudson's River to Lake George, and between the Mohawk River and Wood Creek on the west, prepared for either of the two entrances of the enemy by Ontario or Champlain.

Mr. Webb knew in July, that Mr. Montcalm, who succeeded Baron Dieskau, had collected several

thousand men and three hundred flat boats at St. Johns, and that the enemy were daily filing off from Crown Point to Ticonderoga, and communicated this intelligence to Mr. Delancey, adding, that he expected an attack. Ten days afterwards (3d August) an express arrived with the further advice that the enemy were on the 30th July within twelve miles of Fort William. On the 5th Mr. Delancey embarked for Albany, and the day after we learnt that the Fort was invested on the 2d and complaints were made from above of the dilatory motions of the militia. Mr. Delancey arrived at Albany the 8th, and from thence issued orders for detachments from below. The New-York militia was drawn out for that purpose on the 13th. The horse and volunteers marched the same day, but the main body of seven hundred did not embark till some days after. While these things were transacting, on the sea coast, the garrison capitulated on the 9th, engaging not to bear arms in eighteen months.

Lord Howe got to Fort Edward on Saturday the 7th, but the besieged had no assistance, for the enemy came, 11,000 strong, and our whole force in the lines about Fort Edward, did not amount till the 10th, to more than 6,000.

Mr. Fitch the Governor of Connecticut had no intelligence of this descent till the 6th August; but then ordered every fourth man of the Colony to march up: 4,000 were to be detached from New Jersey; and Mr. Kilby the contractor arriving at New-York on the 14th, for provisions to support the multitudes who were on the way to Albany, it was conjectured that Mr. Webb meant to take that opportunity of advancing immediately to Crown Point, till Mr. Oliver Delancey, who had been despatched that day from Albany, arrived on the 18th at New-York, and had stopped the progress of the reinforcements, and on the 22d the Lieutenant Governor returned to the metropolis.

Mr. Webb's letter to Colonel Munroe, of the 4th, advising him to make the best terms he could, and

that he was unable to help him, through the tardy motions of the militia, was intercepted by the enemy, and not sent until the 7th. When the garrison capitulated, the trenches were opened almost up to the east bastion of the Fort, and by the bursting of a cannon, Colonel Munroe had but four left, with a mortar and only seventeen shells, and a very small quantity of powder.

The garrison were to march out with the honors of war, their whole regiment and one piece of ordnance, and to protect them from the Indians, were to be escorted two miles by five hundred men, and these renewed by as many from Fort Edward. But the baggage was afterwards given up by Mr. Montcalm's advice, to satisfy the French Indians, and yet they were so unmanageable after the plunder, as to butcher our negroes, and to attack even the soldiers. After the demolition of the Fort, the French retired to Ticonderoga, and Mr. Webb then dismissed the twenty thousand men he had collected at Fort Edward, before his countermand of the provincial reinforcements.

While the regulars and militia mutually reproached each other for the late disaster, there were some who blamed Mr. Delancey for slighting General Webb's first intimations, and others who insisted that the General was strong enough to march to the besieged forty-eight hours before the surrender. The General being supported by the British troops, and the Lieutenant Governor apprehending consequences unfriendly to his interest on the other side of the water, naturally looked to his Assembly, and the instant he arrived, despatched circular letters for their convention; and on the 2d sent them a message historical of his conduct. Having alleged that the King had permitted Sir Charles Hardy to resign his government, and having noticed his departure, he proceeds in these words:

“Soon after which, apprehending a visit from the enemy on our northern frontiers, I thought it necessary to take all the measures in my power, to strength-

en General Webb; and for this purpose, I sent out my orders to the Colonels of the militia of Albany, Dutchess, Ulster, and that part of Orange County above the mountains, to march with their regiments to the assistance of General Webb, upon his requisition, and to obey his orders, of which I gave him notice by letter. In the night of the 3d August last, I received a letter from General Webb of the 30th July, advising me, that the enemy were within twelve miles of Fort William Henry, that he should immediately call in the troops at the different posts on Hudson's River, and gave orders for the militia of the counties to march, and desiring my presence at Albany to forward them. I set out for that place on the 5th, which was as soon as I possibly could, and arrived there the 8th. On the 10th I had advice of the surrender of Fort William Henry, and as it was reasonable to think, the enemy with so formidable an army and such a train of artillery as they were said to have, would endeavour to penetrate farther into this country. I sent orders for a detachment of five hundred men from the city of New-York, and West Chester, who showed a very becoming spirit on this occasion. Those above the Highlands had marched in consequence of my former orders on General Webb's requisition, and many proceeded to Fort Edward, but after a short stay, General Webb informed me, that all the militia, except those from the County of Albany, had united in a mutinous manner. I did all I could to stop them, but with little success. This step, whether arising from cowardice or disgust, or whatever other motive, deserves a very severe animadversion, more especially as it was taken up at a time when the enemy were still at Fort William Henry, (only fourteen miles distant from Fort Edward) the most advanced post we had in that quarter of the country. I shall order a strict inquiry to be made into the behaviour of the militia, and cause the law to be put into execution against all delinquents. I left Albany the 21st, and as soon as I came to New-York, I ordered circular letters to

be sent, to call you together as soon as possible; one of the reasons of which was, to recommend to you the completing the regiments in the pay of this province with the utmost speed, General Webb having written to the other governments to complete theirs, as the troops under his command were very much lessened. This was a measure apparently necessary at that time; but as his Excellency the right Honourable the Earl of Loudon, commander in chief of his Majesty's forces in North America, is arrived here with a body of troops, the necessity of this measure ceases. The other reason of my calling you is, to recommend to you a further provision for the subsistence of the New York regiments."

The House only gave a vote of credit the next day, to provide after the first of November for pay due after that period, and adjourned.

The agent by his despatches of the 16th February, had communicated a copy of the New-Jersey petition, for a temporary line, and the report of the board of trade upon it of the 27th January, 1757, advising an order for running the line prayed for; and first, that the Governor of the two provinces be commanded to suppress and prevent all tumults on the borders. Second, that all possessions remain in statu quo. Third, that the governor of New-York issue patents for vacant lands on the north side of the temporary line, and that the proprietors grant on the south, making a deposit of the profits; and fourth, that six months be allowed to New-York to provide for the expense of a final line. The report recited that the allegations of the proprietors had been verified by Sir Charles Hardy, and that Mr. Charles, styling himself agent for the assembly of New York, owned that he had no authority to join in the expense of a commission, and therefore, had submitted to such directions respecting a temporary line, as to his Majesty should seem proper. The agent wrote—"I prayed for further time before their Lordships proceeded upon the Petition, in hopes of hearing the resolution of your House, touching the method

you proposed for the division of this matter, as I have repeatedly applied to you for explicit and positive directions herein, but remaining hitherto without any instruction on that head, and reflecting that by the act passed in your Colony, (though disallowed here) you had left the establishment of the line of property, as well as of jurisdiction, to the direction of his Majesty; it was not practicable for me to oppose a temporary line of jurisdiction, or to prevent the issue this affair has taken."

Nor was the Assembly at the same time unapprised of the expediency of some alteration of the eastern boundary, disputed by the Massachusetts Bay. For Mr. Charles, on the 11th May, added, "I am now to acquaint you, that upon the representation of Sir Charles Hardy to the Lords of Trade, of divers outrages committed on the borders, between your Colony and the Massachusetts Bay, by his letter of the 22d December last, accompanied with a report of your Commissioners at Albany, in 1754, and a map of the country, all which have been communicated to the respective agents, and having attended their Lordships on the subject, which I endeavoured to show the inclinations of your Province, to bring this matter to an amicable accommodation; first, by imparting to the Governor of the Massachusetts Bay, the claim of New York, as stated in the report of the Committee of your Council, of the 28th February, 1753, which were rejected by the Commissioners of the Massachusetts Bay, without any reason assigned, or their stating their own claims and pretensions. Their Lordships delivered their opinion of a boundary line, proper to be established between the two governments, as contained in an extract of their Lordships' journal; whereof I send a copy enclosed, touching which, it is probable I may receive the sentiments of your Colony before the report of the board obtains the sanction of the King in Council."

The Extract was in these words—"Extract of the Journals of the Proceedings of the Lords on Tuesday the 27th March 1757.

“Their Lordships took into consideration the papers relating to the dispute between the Province of New-York and Massachusetts Bay, concerning their boundary line; and the agents attending as desired, were called in, and their Lordships after having heard what they had to offer, and read and considered the grant to the Duke of York, in 1663-4, and the Massachusetts Charter, granted in 1691, and also a letter from Colonel Nicholls, Governor in New-York, to the Duke of York, dated in November 1665, to hear and determine certain points in dispute, amongst the New-England Governments, which papers are upon record in this office; delivered it to be their opinion, that a straight line, to be drawn northerly from that point, where the boundary line between New-York and Connecticut ends, at twenty miles distance from Hudson’s River, to another point at the same distance from the said river, on that line which divides the Provinces of New-Hampshire and Massachusetts Bay, will be a just and equitable line of division between the said Province of New-York and the Massachusetts Bay; and Mr. Bollan being asked if he had any objections thereto, desired time to consider of it, and that he might have their Lordships’ opinion in writing, and also copies of their authorities upon record, on which that opinion was founded, which was agreed to by their Lordships, and that copies should be likewise given to Mr. Charles, agent for New-York, and then the agents withdrew. Governor Nicholls’ letter was this—

“I have formerly rendered account of the division and settlement of bounds between your Royal Highness and the Patent of Connecticut, made by His Majesty’s Commissioners and the Governor and Council of Connecticut, wherein five towns were relinquished in Connecticut by virtue of their former grant from His Majesty; although the said tracts of land were given to your Royal Highness to the utter ruin of that Colony, and a manifest breach of their later patent, which determination was a leading case of equal justice, and of great good conse-

quence in all the colonies; and therefore we were assured would be unacceptable service to your Royal Highness, so that to the east of New-York and Hudson's River, nothing considerable remains to your Royal Highness, except Long Island, and about twenty miles from any part of Hudson's River. I look therefore upon all the rest as empty name, and places possessed forty years since by former grants, and of no consequence to your Royal Highness, except all New England could be brought to submit to your Royal Highness's Patent."

The report of the Commissioners appointed in 1664, to visit the New-England Governments, relating to the bounds of the Massachusetts Colony, was also transmitted by the agent, running thus—

"This Colony, which has engrossed the whole trade of New-England, is therefore the richest; hath many towns, but not one regularly built within its just limits; which the Commissioners find to be Siwanet Brook on the south-west, and Merrimack River on the north-east; and two right lines drawn from each of those two places, till they come within twenty miles of Hudson's River, for that river is already planted and given to his Royal Highness."

The Speaker's letter of 12th September, acknowledges the receipt of these letters, adding, "I am to acquaint you, that you are fallen greatly under the censure of the General Assembly, for not objecting to the line of the year 1617, being the temporary line of jurisdiction between this Colony and that of New-Jersey, as you were long since well informed that this Colony always rejected that line. A Committee is appointed to examine and consider the New-Jersey Petition on that head, and to give proper instructions upon it." This is proved by the journal. But why another was not charged with the care of the proprietors, affected by an opinion of the Lords of Trade, I leave to the reader's conjectures, after remarking, that the Delancey family, who were interested in the New-Jersey controversy, had not the same motives to stimulate their attention.

to that with the Massachusetts Bay, and were perhaps disinclined to counteract Mr. Secretary Pownall, who, to ingratiate his brother with the people, over whom he was set, discovered a great desire to abridge the old claim of New-York to all the country between this twenty mile line and Connecticut River. Mr. Jones, indeed, leads Mr. Charles to expect a letter upon this subject, from the New-York Commissioners, but the journal does not warrant his suggestion. The committee on the other subject, were the interested members of New-York and Orange County, who sharply reprehended the agent for not opposing the report respecting a temporary line, in a letter drafted by Mr. Scott, 25th October. But the House would have better consulted the interests of the Colony, by bills providing for the expense of Commissioners for settling all their contested limits, though the session, instead of two had been prolonged to ten days.

The Board of Trade shortly after changed their opinion, and adopted a still more disadvantageous one to this Colony, as appeared by the following extract from their journals of 10th May, 1751 :

“The Secretary acquainted their Lordships, that having in consequence of their orders communicated to Mr. Bollan, agent for the Massachusetts Bay, their resolution of the 27th March last, with respect to the boundary line between the said province and New-York; he acquainted him that upon consideration thereof, and of the papers relating to the adjustment of the line between the Province of New-York and Connecticut, he had found that though it did appear to have been the primary intention in that settlement, that the line should be twenty miles from Hudson’s River, yet the Province of New-York, having agreed that Connecticut should continue in possession of the town of Greenwich, and a tract of land adjacent thereto, at the south end of the line, the Province of Connecticut had, in consideration thereof, yielded to them a tract of land lying upon the northern part of said line, commonly called the Oblong; so that in

his apprehension, the said boundary line was at more than twenty miles distance from the said Hudson's River; and therefore he submitted, whether the drawing the boundary line between New-York and Massachusetts Bay from the north end of the said Connecticut line, as described in the board's resolution of the 27th March, would not be in some measure inconsistent with the facts and evidence upon which that resolution was founded, and thought it necessary to have their Lordships' sentiments upon this matter, before he could form any opinion upon the general proposition.

"Their Lordships, upon consideration of what had been represented by Mr. Bollan, agreed, that a straight line, to be drawn northerly from a point on the south boundary line of the Massachusetts Bay, twenty miles distant, due east from Hudson's River, on that line which divides the provinces of New-Hampshire and Massachusetts Bay, will be a just and equitable line of division between the said Provinces of New-York and Massachusetts Bay."

This opinion being approved by the privy Council, and producing a letter from the Secretary of State, recommending that line to both provinces, the sequel will show that we never could remove this obstacle to the extent of our claim, even so far eastward as to cover several ancient patents under this Colony.

The disgrace incurred by the British troops, silenced their invectives. His Lordship had done nothing against Louisburgh, and was censured by his whole army. On the first intelligence of Montcalm's attack, he wrote to Mr. Pownall, who had lately arrived as Governor at Boston, that he intended to encamp on *Long Island for the defence of the continent*; and that Governor on the other hand, was in such consternation, as to give orders for the driving in all the live stock in the west, to the east side of Connecticut River; and it had taken air, that Mr. Webb had intimidated his troops, by sending his own baggage to Albany, declaring his intention of retreating one hundred and sixty miles down the river to the

Highlands, and within sixty miles of the metropolis of the Province. What impression the Assembly wished to make at this time, in England, appears from the Speaker's letter to the agent of the 12th September. "As to our military operations, we are still on the losing side. Fort William Henry on the back of Lake George, being taken and demolished by the enemy, after a siege of eight days, with no great loss of men on either side. It surrendered on capitulation, by which the French became masters of the fort, artillery, and all the stores. Here were lodged all our cannon and stores intended against Crown Point. My Lord Loudon is arrived from Halifax, without any attempt on that side. It is said, the enemy were superior to us, both in land and sea forces. Thus, this campaign is like to end as did the last, with loss to poor America. It seems very strange to us, that the French can send such large supplies to America and always before us, notwithstanding the great superiority of the British navy. Surely there must be a great failure somewhere, which if not timely remedied, may probably end in the entire loss of the English America. However, we live still in hopes that the next year's succours will be stronger and arrive earlier, our provincial forces were ready in April, so that no blame can be at our doors. I wish my next may give you better tidings."

Mr. Delancey's vindictory speech was the more necessary, as he knew that his public conduct had of late been narrowly watched, and his arts during General Shirley's command, were disclosed by a pamphlet, published in London, under the title of "A review of the military operations in North America."

Mr. Charles, in a private letter to the Speaker of the 11th May, accompanying a copy of it, writes, "there has been lately published here, a piece which I shall send you, entitled, a review, &c. This production comes from New-York, and has been handed to the press by Mr. Alexander, as he acknowledged

to Mr. Pownall, Secretary to the Board of Trade. There is a virulency against several private characters, and some reflections on the proceedings of your association, extremely indecent. I believe the Governor of Massachusetts Bay is put in a fair way by his brother of discovering the author.

No reply was ever made to it. Mr. Jones' letters take no notice of it. Secretary Pownall, by menacing Dodsley the printer, traced it to Mr. William Alexander, who denied his being the author; but asserted that he knew most of the suggestions to be true, and these facts not alleged, which convinced him that his brother the Governor, for whom he interposed, deserved the character it exhibited. The pamphlet coming out when America was little known, and transactions here still less, was universally read and talked of in London, and worked consequences of private and public utility.

General Shirley emerged from a load of obloquy.\* His extensive designs acquired advocates; his successors became cautious and vigilant; the nation suspicious and inquisitive. His Assembly awed. Party spirit less assuming, and the multitude so enlightened, that several changes were made on the next dissolution.

The inefficacy of the measures hitherto pursued in America, filled the colonies with distrust; but few discerned the true cause of our disasters. They are hinted at in a letter of that day—"† To the scandal of the present age will history account these losses, sustained by a people who had it in their power to extirpate the whole French Colony at their pleasure. You know, and every man here knows, that we might have raised forty thousand men on such a design, if our strength was united, a number equal to all the

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\* A board of general officers had been ordered to inquire into his conduct, and the secretary at war was commanded to make out the warrant for it. Mr. Shirley often urged for it, and after repeated applications, was told that it could not be done, since there was nothing charged against him.

† It was written by the author August 1757, to a gentleman in London:

males in Canada. That union can in a moment be effected, by a law for the establishment of an American parliament. While each colony is left to divert itself with its private contentions, the common interest must suffer; whereas a convention of members from each, for a general representation of all, would extinguish the party disputes now subsisting. Pennsylvania, a colony of fifty thousand fighting men, must then do her part; and when that day dawns, the little tyrants of the respective colonies will die away with these projects, and our affairs be well understood in England. You have a Board of Trade, and their Lordships are presumed to have the best acquaintance with the true state of America. We have fifteen colonies on the Continent alone; each three separate branches of the Legislature, all transmitting their several acts, votes, &c. to the Plantation Office. These must all be read for information concerning our state. But is it possible for that board to take even a cursory perusal of the papers transmitted? and yet something more than that is necessary. I conclude from these premises, that their Lordships do not know the state of America. Consider, besides, that their acts affect a body which is in to-day, but out to-morrow; and if *they* are uninformed, what must be the consequence? A law for the establishment of a union, I know, requires the ablest heads. Parliament is sufficient for the task. The defects of the first plan will be supplied by experience. The British constitution ought to be the model; and from our knowledge of its faults, the American one may, perhaps, rise with more health and soundness in its first contexture, than Great Britain will ever enjoy."

The Earl went to Albany on the 20th of October,\* and thence for a few days visited Fort Edward, and there met Colonel Peter Schuyler, who was made prisoner at the surrender of Oswego. He left Quebec the 22d October, and reached New-York the 19th

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\* Governor Morris sailed for England 4th October, to animate the administration to an expedition against Canada.

November, upon his parole, to return in May, unless a cartel was settled. The troops from Halifax, on their return, were immediately ordered to Albany. His Lordship posted but one hundred and fifty men at Herkimer, a little fort about one hundred miles west of Albany; and Montcalm, taking advantage of their public influence on the Six Nations, debauched five hundred from the four remote cantons of the Oneidas, Onondagas, Cayugas and Senecas, to join a French party who fell upon the German Flats on the 15th of November, massacred and carried others into captivity, and broke up several families of that settlement; and thus ended the unfortunate year of 1757. His Lordship cantoned his troops in several of the provinces with such a magisterial tone as gave fresh and general offence. From the civil department he met with no opposition. Their pusillanimity or their interests, made them silent and inactive until the multitude exulted at the news which not long after arrived, of his being recalled to England.

Before the close of this unfortunate year, Mr. De-lancey had another interview with his Assembly.

The small-pox prevailing in the centre of the capital, he convened them in the suburbs; and as it was ludicrously said, *at his own kitchen*. The truth is, they met on the 6th December in an out-house, occupied by the overseer of his own farm upon the skirts of the town.

One of the main designs was to procure an indemnity for himself and the Council, for diverting £2000, which had been appropriated for fortifications, from that use, for the construction of barracks, that private families might be delivered from the inconvenience of the soldiers billeted upon them by the noble general at the head of the army, and which they ventured to draw out of the treasury at the request of the city corporation, who had engaged to replace it. But he held up other objects to their attention. The salaries of the year, the defence of the western frontiers, the maintenance of the prisoners, restraining the King's troops from intemperance,

the regulations of the staples of flour, beef, pork, and butter, a stricter militia law, the continuance of the excise upon tea and the stamp duty, a poll tax upon negro slaves, and a tonnage duty on all vessels, not excepting those from Great Britain.

Several laws for ordinary cases were passed, towards the end of the month, and among them, one to prolong the currency of the bills of credit, the royal inhibition notwithstanding, without the least hesitation.

To the Lieutenant Governor, the Assembly gave an augmented salary of £1800, and £400 more under the pretext of fire and light for the independent companies now scattered through the provinces, and the sum of £50 was added to the puisne judges' salaries, as a consideration for their extraordinary services, unassisted as they were, by the Chief Justice's absence from the bench. And the day before they rose, care was taken to order the Speaker to write to Sir Charles Hardy, who went from Halifax to England, to answer, as it was conjectured, the double purpose of preserving his commission and prolonging his return.

Mr. Jones's letter was doubtless very agreeable to our Admiral, just arrived from an unsuccessful expedition. I transcribe it here, and insert beneath the one from the agent that covered it.\*

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\* Sir—Enclosed you have a letter to Sir Charles Hardy, our late Governor, which you are to deliver to him with your own hands, and to consult and advise with him in affairs relating to this Colony. We are greatly surprised to find that their Lordships for trade and plantations, have made a second report to his Majesty on the affair of the Massachusetts line, by which we shall be great losers, because by the course of Hudson's River, a due east line from the stations, we are to run from and to, will fall some miles short of twenty, which by the first report we were to have. You are therefore to use your best endeavors to prevent such a loss to this Colony. The committee and commissioners will write more largely to you on this head. We are also greatly surprised, that this affair should be transacted without your privity, (which we must suppose to be the case) because you have given us no notice of it. If you knew of it, you have been greatly deficient in your duty, and are justly liable to censure for not opposing it, and acquainting us with it. The House have not yet finished the business before them, and are to meet soon after the holidays. After that I

New-York, 24th Dec. 1757.

Sir,

By the enclosed minutes you will see the authority I have to write to you, in the name of the General Assembly of this his Majesty's Colony ; and I assure you, Sir, that it is with the utmost pleasure I execute this authority, in a grateful acknowledgment of your past and steady attention to the public service of the Colony from the first moment of your arrival in it. My station of speaker to the General Assembly during your whole administration, furnished me with frequent opportunities of observing with pleasure, that the welfare and prosperity of his Majesty's subjects committed to your care, was your chief and principal study. Surely no Governor ever attended the public service with more assiduity, or more speedily pursued the good of those he governed. This, Sir, assures us that though you have left us, you will not forget us, but will on every suitable occasion assist our agent, Mr. Robt. Charles, on what may relate to this Colony, and represent us in a favorable light to our most gracious Sovereign, to whose person, family and government, this Colony has a most sincere and inviolable attachment. I do, in the name of the General Assembly, most heartily congratulate you on your preferment in his Majesty's navy, and assure you, that you have their most ardent wishes, and, I am persuaded, of the whole province ; that success, honor, and happiness, may attend you in that and every other station to which Divine Providence shall call you.

While we were in suspense respecting the plan expected for the operations of the ensuing year, the military officers indulged great heats concerning the inactivity of the last campaign. Lord Charles Hay

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expect to write to you again on the affair of the Jersey line also. An order is made out for your last year's allowance, and the same continued for another year ; but how it will be after that I cannot say. The House have not proceeded to the examination of accounts, when they do, you will fall under consideration.

led a party at Halifax in severe reflections on the Earl of Loudon. Their animosities spread to New-York; and among the discontented, no man indulged in greater liberties than Mr. Lee, then a subaltern, who did not restrain himself in the open coffee-house, from calling it the Cabbage Planting Expedition; drawing into question not only the Earl's military skill, but his courage and integrity: and others were divided respecting the northern events. There were advocates for Mr. Webb, who insisted that Fort William Henry was unnecessarily surrendered, while those who adhered to Colonel Young, impeached that General, not only for neglecting to relieve the besieged, but for the loss of the German Flats, by demolishing the fort at the great carrying-place in 1756. For Mr Webb, it was affirmed, that he was not 3000 strong at Fort Edward, till the day before the capitulation; that he then wrote to Monroe, that he was on the point of marching to his aid, but overpersuaded by Young to give up the fort. As to the demolition of the western fort; in order to acquit Webb, it was averred to be in consequence of the Earl's positive orders.

Whatever the real design, certainly to the height of these animosities it was owing, that a winter attack upon Ticonderoga was talked of, and Lord Howe mentioned as the person who was to lead that enterprise. His Lordship then commanded a regiment quartered on Long Island. The carpenters at Albany were employed in framing small sleds to be drawn by hand; snow shoes were provided; worsted caps bought up; a new corps of five hundred Rangers formed under Colonel Gage, and Rogers ordered to raise one thousand men, of which he was to be Major Commandant. But after a few weeks nothing more was heard of this undertaking, and the obloquy was transferred from Webb and Young, to the Earl of Loudon, already expressed by the joint calumnies of his own army and the provinces. Mr. Webb wintered with him in town; but General Abercrombie took no part in these quarrels, and quietly passed his

time at Albany, where he received the public intimation of the extensive project of making a conquest of all Canada, and his own advancement to the command of a great army, to be composed of the British troops, augmented by the whole force of the colonies.

Mr. Delancey collected the Assembly, and made a speech to them on the 10th March, 1758, in which he incorporated the animating terms of Mr. Pitt's circular letter, for setting all the wheels in motion to raise 20,000 provincials. The King was to furnish all the arms, ammunition, tents, and provisions: the levying, clothing, and pay, we were to defray, with a promise of being relieved according to our active vigor and strenuous efforts, by a parliamentary reimbursement.

"I hope," says the Lieutenant Governor, "a number of ballot men will have at heart the honor of a brave and the best of Kings; and will voluntarily and cheerfully engage in a service, on the success of which their properties, their civil and religious liberties depend.

Nothing could be more grateful to the majority of the people than the design proposed. The Assembly promised their aid without a moment's hesitation, and resolved to raise, clothe, and pay two thousand six hundred and eighty men, with ten pounds bounty; for every volunteer, and twenty shillings to the officer for every recruit. And the Lieutenant Governor and Council, to favor the levies, laid an immediate embargo. The House voted to maintain every poor soldier's family in his absence; and to defray the expense, bills were emitted for £100,000, to be cancelled by a tax for nine years. The necessary law was passed, and the Assembly dismissed before the end of the month, without the least jar among the legislators upon this subject, though the Council had refused their assent to the favorable project for extending the power of the government, by enlarging the influence and authority of the Trustees of the Peace.

Mr. Nicoll brought in the five-pound bill on the 1st December preceding, and four days afterwards it was sent to the Council. On the 23d they were stimulated as to the progress respecting what "the good people of the colony had so much at heart," and were answered, that while the bill was in committee, a petition was presented to be heard against it, which that House intended to grant after the holidays. Another more important message by Mr. Watts and Colonel Delancey, respecting it, was delivered on the 31st January; adding, that this House, in justice to their constituents, cannot avoid being solicitous about a bill, which experience has shown to be attended with such happy effects in the several counties where it took place, and which the disinterested part of the good people of this Colony are impatiently expecting to see continued, and therefore, that their just expectations may not be disappointed, and that the city of New-York, and such other parts of the colony as have hitherto been excluded, and where its use is apparently necessary, may no longer be deprived of the benefits almost universally acknowledged to arise therefrom—the House hopes the Council will not continue to defer their concurrence thereto.

The Upper House took no umbrage at the unparliamentary mode of arguing and corresponding with each other, but simply replied, that the day formally appointed for the hearing, would not arrive till the 8th instant. Before that they were irregularly adjourned, from the 4th of February to the 7th of March, on a letter from the Lieutenant Governor to the Speaker. I observed that he chose to make a speech to them after the receipt of Mr. Pitt's letter, though there had been no end of the session. The Council unmoved, sent down the bill with amendments, and the same morning (21st March) were informed that the House would not concur in them, and thus the fate of the bill was suspended; the Council adhering to their alterations, and the Lower House being, as was then supposed, satisfied with the amazing influ-

ence which the new commissioners for raising the army would create prior to the election near at hand, in consequence of the septennial act passed in the time of Mr. Clinton, who was censured for a practice in which he was now enslaved, that of filling up vacancies in the counties, according to the nomination of the members, some of whom were trusted with blanks to be filled up at their pleasure. But on the nearer approach of the dissolution, the Assembly rescinded their first vote, and concurred with the amendments, and the bill was passed.

Mr. Amherst was to accomplish the conquest of Cape Breton, the island of St. Johns and their dependencies. Mr. Forbes commanded in the enterprise against the French forts on the Ohio; but the main army for penetrating Canada through the northern Lakes, was to be conducted by Mr. Abercrombie.

Fort Edward was the place of rendezvous. The New-York troops were all levied and collected there a fortnight before; the stores arrived from England about the middle of June, under convoy of the Vanguard; not long after which, the forces of the Colonies came in. By the activity of Lord Howe, and Lieutenant Colonel Bradstreet, the boats were forwarded with speed, and Lord Howe led the first division of 4000 men, before the end of June to Lake George. General Abercrombie followed with the main body, and on the 6th July, the whole army landed at the north end of those waters.

They defeated (to use the words of Mr. Jones' letter to the agent of the 2d November) a party, who went against them and got possession of all the ground between the place of landing and the French fort at Ticonderoga; but meeting with a small repulse there, they immediately (at least as appeared to us) gave up all the advantages they had gained, and hastily returned back over the Lake again, and nothing has been attempted since in that quarter. Where the faults lay we cannot take upon us to say, but it appears to us to be more in the *head* than the *body*.

Lord Howe, on the march to the lake, fell a sacrifice to his valour in a conflict with the French advanced guard. Brigadier Prevost, in a letter of the 3d August, informed the author, that the army marched in the best order; but from ignorance in the officers, or the indocility of the troops, they took fright on the report of a few muskets, and instantly dispersed. That this happened twice in two hours.

The works at Ticonderoga were trifling: they had piled logs on the land side in a line for a breastwork, and trees before it to embarrass the assailants. Mr. Abercrombie, who was two miles in the rear, and not informed that there was at one end an open access to the French encampments, ordered an attack with musketry alone, upon that part of the line which was finished and fortified with cannon, and there we sustained the loss in killed and wounded: nearly two thousand brave men, who were advancing with the utmost difficulty, greatly obstructed by an abattis of trees.

The French General, who was just within the lines, perceived our folly, stripped off his clothes, and with a drawn sword, forbid a musket to be fired upon the pain of the severest punishment, until he gave the word. When, embarrassed and unable to fly back, he issued the word of command, and our front was mowed down like grass. Hearing of the slaughter Mr. Abercrombie ordered a retreat; he hurried them on the night of the 7th to the Lake, where they embarked with the utmost precipitation, nor even then abated their speed till they had passed its whole length.

Colonel Peter Schuyler, who was then a prisoner in Canada, informed the author that Mr. Montcalm's whole force there and at Crown Point did not exceed three thousand men; nor their killed and taken both within the lines and at the advanced guard, two hundred and thirty; and that from a dread of our vast superiority, they had actually before our retreat prepared to abandon Crown Point.

Lieutenant Colonel Bradstreet, impatient of this disgrace, and hoping nothing from a General, who, while he calumniated his army as broken-spirited, discovered that he wanted firmness himself, urged an attempt upon Frontenac. He was sent to Oswego in 1755, was there again in 1756, and had entered into Shirley's views of the importance of commanding the waters of Ontario, and offered his services to conduct the enterprise. Abercrombie gave him a detachment of three thousand men; he rather flew than marched with them through that long route from Lake George to Albany, and thence again up the stream of the Mohawk River, then across the postage, down the Wood Creek to the lake of the Oneidas, and the rapids of the Onondago to Oswego. Thence he pushed his open boats into the sea of Ontario, traversing the south-eastern coast from point to point, till he crossed the St. Lawrence and surprised the garrison of Frontenac. He invested it, took it, burnt an immense magazine for the supply of the interior dependencies, and in twenty-four days after having destroyed the vessels on the Lake, returned to assist in securing the important pass in the country of the Oneidas, which Mr. Webb had the year before abandoned to the intimidation of all the six Indian tribes. But either by the fatigue of these vigorous exertions, or the bad quality of the waters of the Wood Creek, we lost five hundred men of this detachment, a great part of whom were levies of this colony. The author's letter to Governor Morris, enclosing one from Mr. Dubois, who was a captain under Bradstreet, brought the first intelligence of this event to England. He desired an audience to communicate it to Mr. Secretary Pitt, who received him, and unassisted, entered into so copious a display of its consequences, that his informer lost, what was one of the ends of the interview, not having a thought to add to the sagacious remarks of that bold, active, and discerning statesman, who appeared to be accurately informed of the inland geography of

America, then understood even in this country only by an inquisitive few.

It was imagined that Mr. Abercrombie would renew the attack, but the author learnt from General Prevost that some additional works at Lake George engrossed all his attention, and that the campaign would end as shamefully as it had begun. Having communicated the public censures on his conduct in that quarter, so early as the 21st of July, his answer did not admit that the General was culpable in recrossing the Lake, and seemed to hint that there could be but little dependence on the provincials.

The author, on the 13th of September expressed himself thus :—

“ Though some of the Colony troops seemed to discover a temper not very encouraging at the first landing, is it not true, that they behaved with spirit in the attack? or, which is sufficient to my purpose, did not the General think so, when orders were given to thank them publicly for their gallantry? was not their universal surprise at the retreat some proof that their minds were then firm, and not broken by a panic? and does not the rapidity with which they were brought off, demonstrate that no time was spent to examine the temper of the army? what are your reflections on the General’s orders, on the cannon and baggage to New-York. Provincials reduced Louisburgh the last war. Acadie was reduced mostly by provincials. Dieskau was taken by the Colony troops. The rangers are colonists. Provincials cut off Kill-anning, and by provincials we lately destroyed Frontenac. You will agree with me that irregulars will be of use for a surprise in a weakly fortified, wooden country. When provincials succeed in one kind of service, most men think them fit for all. This indeed is arguing ill, and nothing will show it to be bad logic so soon, as better conduct on the part of the regulars. What think you of rebuilding Oswego? If the war continues another campaign, I can’t help thinking that in a general invasion of Canada, five or six thousand troops sent down the Cataraqui stream

would greatly favor the descent of a larger army through Champlain, and a fleet on the river."

The reply of the 28th has these passages—

"I have no answer to make in regard to the General's orders to Cummings on the night of the attack, for I am at a loss to defend a *bad cause*, as I should be to give up a *good one*. Provincials have performed all you relate, and had they been properly led, it is my just opinion, they might have done more, but for all that, they were not in the least fit for the service we are upon. I do not know verily, whether we shall attempt this year to retrieve our losses, but we are in readiness with regard to all the necessary implements and provisions; and if any thing is still wanting, I am pretty certain it will be at the lake before the reinforcement of the regulars can come from Boston."

When the five regiments from Louisburgh landed there, and marched slowly to find winter quarters at Albany, they had not the least intimation that Mr. Abercrombie suspended his re-attempts for their junction, and then heard it for the first time with surprise. The controversy then arose respecting the fault which was at last charged upon Mr. Pownall the Governor of Boston, to whom Mr. Abercrombie had entrusted despatches to Mr. Amherst for reinforcements immediately after the retreat from Carillon. But the season was elapsed. The French had gathered in their harvest. The British fleet had left the St. Lawrence, and the whole force of Canada was collected on Lake Champlain, and by the middle of October, the victors from Louisburgh were in winter cantonments.

The operations terminated in the north-west, in the construction of a respectable fort in the country of the Oneidas, and it was called Stanwix, in compliment to the General who commanded in that quarter.

The account of the loss of Louisburgh on one side, and of Frontenac on the other, arrived at Montreal on the same day. The militia of that island and neighbourhood were instantly commanded up the St.

Lawrence to repair the demolished fort. Colonel Peter Schuyler was witness to the consternation of the French colony. The whole force sent to Frontenac did not exceed fifteen hundred men, and upon a false alarm of Bradstreet's second approach, the greatest part of them abandoned the works, and descended the river with the utmost precipitation; the dispirited populace considering their country as lost.

But our success on Ontario had still more extensive effects, and verified in fact what Shirley long had beheld in speculation. The Indians now changed their temper. A peace was established at Easton in October, not only with the six nations, but all the barbarians on the waters of the Delaware and the Susquehannah. The reduction of Frontenac contributed also to the progress of General Forbes on the Ohio. The enemy abandoned Fort Du Quesne on his approach, and a treaty was concluded with the numerous savages in that remote country, who had, after Bradstreet's defeat, spread desolation along the interior frontier of all the southern colonies. Frederick Root, after the treaty of Easton, ventured amongst them at the hazard of his life, and convened eight hundred of their warriors at a council fire on the western bank of the Ohio, near Fort Du Quesne. The Alleghanies, consisting of four hundred fighting men, who formerly inhabited Pennsylvania, New-Jersey, and the western parts of this province, agreed to meet at Philadelphia at such time as Mr. Denny the Governor of Pennsylvania, should appoint. The rest, who were Shawnees, and lived farther down the stream of the Ohio, were inclined to wait the result of the negotiations with the other tribes, but engaged to disperse at present, leaving Mr. Forbes to advance without opposition, and conducted part to that army to communicate that agreeable intelligence.

After divers adjournments, Mr. Delancey and his Assembly met again in November, and he delivered a speech, congratulating them on the reduction of Louisburgh, the erection of Fort Stanwix, and the success at Frontenac. Of the repulse of Ticonderoga

he expressed himself with caution—"Though (says he,) our sanguine hopes have been disappointed, yet the enemy have gained no ground there, and things are as they were on Hudson's River at the beginning of the campaign." He then reminds them of three trips to Albany—recommends these to their consideration, and leaves them to the common business of the year.

At the instance of Mr. Cruger, the thanks of this House were given to Mr. Oliver Delancey, who had served with General Abercrombie, as Colonel in chief of the New-York forces—"For his great service and singular care of the troops under his command."\* They gave his brother the Lieutenant Governor eighteen hundred pounds for a salary, four hundred pounds for fuel, candles, and lights, and for his three visits to Albany three hundred pounds more.

According to a law, no Assembly could continue longer than seven years from the test of the summons by which it was first convened; and the writs for the present House issuing in January 1752, this was of course the last session, the term expiring in a few weeks.

The party who had so long held the reins, could not think of separating without a five-pound act for the greater influence of the trading factors in the ensuing elections.

One of the main sticklers in the Council for amending the bill, was Mr. Chambers; the profits of whose office, as town-clerk of the capital, would be greatly abridged by the commission of all causes between forty shillings and five pounds before cognizance in the Mayor's court, to a single justice of the peace.

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\* He with Mr. John Cruger and Mr. Beverly Robinson were the paymasters and commissaries for laying out the £100,000 devoted for the service of this campaign.

This was his motive for amending the bill, and he was supported by the majority, who thought it reasonable to give a compensation to all patent offices whose profits were to be lessened by that bill. The Assembly had refused the amendments, and the Council had given notice that they adhered to them, so that the bill had been considered at last, until the House, unwilling to be dissolved without it, resumed the consideration of the amendments on the 9th December, (for no prorogation had intervened) and assenting to them, the Council, (into which Mr. Watts and Mr. Watson had been introduced by the interest of Sir Charles Hardy,) without any objection handed the bill over to the Lieutenant Governor, and it passed into a law.

Before their parting, care was taken to intimidate and weaken the influence of Mr. Depeyster the treasurer, and his powerful connexions in the interest of his brother-in-law Chambers, by stating an account between him and the Colony, according to which he appeared to be a debtor to the public in 1757, for above thirty thousand pounds; and to reward Mr. Speaker Jones, who had so long served the interest of the Lieutenant Governor, and fallen under the suspicion of his constituents in Queen's County as a friend to the chartered college, he was constituted one of the judges of the supreme court, and on the face of a new instruction gave him his commission, granting the office during good behavior. But it must be added, that there was at that time an important cause to be tried on a claim to near sixty acres of land in the suburbs of the metropolis, held by the corporation of Trinity Church, of which Mr. Chambers and Mr. Horsmanden were members, and therefore exceptionable judges, and when the trial came on Mr. Jones sat alone.

But it was easy to apologise for this appointment, especially as the two houses at this time furnished him with a very seasonable exhibition of the zeal of the Colony in the services of the war, with a view that this representation should be communicated with

his own additions to the king's ministers for a share of the promised reimbursements, and that delivered, Mr. Delancey dissolved the Assembly on the 16th of December, "not (as he told them) for any distrust of their proceedings; on the contrary, I take this public occasion of thanking them, and declaring that I think they have done a great deal for the service of their king and country, and that they merit the approbation and thanks of their constituents. But as his Majesty's commands for the operations of the ensuing year against the enemy are not come over, and probably will not arrive here till near the time when this Assembly must expire by the limitation of the septennial act; in which event, if this Assembly should not during their continuance go through the business then to be recommended to them, the public service would be delayed and perhaps disapproved."\*

The elections demonstrated that all the arts used to influence the multitude were insufficient to extinguish the flames of jealousy excited by the partial pre-eminence given to one denomination in the modelling of the college. Fifteen new members were introduced, and among them several whose abilities increased in the difficulty of managing their humors, and who by their opulence were indifferent to the smiles or frowns of a party they meant to check and subvert.

Philip Livingston, a popular alderman, came in as a member for the metropolis; William Livingston, who had signalized himself in opposing the exclusive charter, was chosen to represent his brother's manor; Robert R. Livingston and Henry Livingston were sent by the County of Dutchess; Mr. Hicks of Queen's County had been a partisan of Governor Clinton, and with his colleague were preferred to Mr. Justice Jones and Cornel. The people of that county censuring the former as a tool to the Lieuten-

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\* It was known that General Amherst was to command the next year. He sent some of the Louisburgh troops across the country from Boston to Albany, and arrived at New-York on the 12th December 1758.

ant Governor, and the latter as influenced by his old colleague. Messrs. Hasbrouck and Bruyn, Herring and Wisner, were sent up by Ulster and Orange counties, disgusted by the late ruling party.

But Mr. Delancey was not left without hopes. His brother Oliver, and his friends John Cruger, the Mayor, and Mr. Lispenard got in for the city, nor did his brother and his cousins Verplanck and Rensselaer lose their seats. Besides, he could rely upon Mr. Nicoll, his cousin-german Mr. Watts, and upon Messrs. Winne, Philipse and Thomas, who were his companions and members of the late House.

Add to this, that the Delanceys had gained in the Council what they lost in the Assembly. He seemed to be fixed in the chair, and therefore awed the whole board. In proportion to their jealousy of the Livingstons, who were considered as the leaders of the non-episcopal denominations, they were willing to draw with the Delanceys, though the latter were not fond of being publicly considered as the head of a sect, though powerful in its influence, yet small in point of numbers; not to mention that the new members, Watts and Watson, were not only sure votes in that board for the party, but a check upon the freedom of their debates. From this time we shall distinguish the opposition under the name of the Livingston party, though it did not always proceed from motives approved of by that family.

The writs of summons were returnable on the 26th January, 1759, but the inclemency of the season preventing their convention, Mr. Delancey prorogued them by a proclamation under his *private seal*, to the 31st. For this irregularity he had the advice of his Council, nor was it excepted to by the Assembly. The new plan for the year being not yet come to the hands of General Amherst, who had been waiting here in daily expectation of it, the Lieutenant Governor, after Mr. Nicol was chosen Speaker, addressed them with congratulations on General Forbes's success against Fort Du Quesne, recommended a more compulsory law for impressing horses and car-

riages, the prevention of frivolous arrests, the payment of public debts, and their concerting a plan for more populous settlements of the waste lands of the crown. These measures were as much for his own interest as for that of the public; the last mentioned especially, by which his emoluments in the land-office might by new grants be greatly increased.

They gave him a general answer with warm professions of zeal for the service of the crown and their country, and entered into the common routine of business, till Mr. Secretary Pitt's despatches arrived the latter end of February, requiring an addition to the British troops of at least twenty thousand men from the Colonies of the east, and of Pennsylvania, upon the terms of the last campaign.

It was immediately resolved to raise two thousand six hundred and eighty men, as the proportion of this Colony, by giving each individual £15 bounty, and twenty shillings more to the recruiting officer; and to defray the expense by an emission of £100,000 in paper, to be sunk in nine years by a tax beginning with £12,000 for the present.

To quicken the levies, the Lieutenant Governor urged the House for power to make detachments, that every man might be interested in procuring volunteers; and by the 7th of March, the main bill for the levies and one for impresses being ready, they were passed with two or three others of less moment, and the members retired to their counties to forward the enlistments, when great umbrage was taken by the quakers, to whose conscientious scruples the Legislature had shown very little regard.

But the Assembly were soon reconvened for a fresh proof of their zeal. The agents for the *motley* contractors were out of cash, and the end of the campaign in danger of being frustrated, unless a loan could be made to the crown of £150,000 currency. It was no sooner asked by Mr. Amherst, than a law passed (3d July) upon his promise of repayment in the course of a year, by bills to be drawn by the

deputy paymaster of the army, and the cash lent consisted of bills of credit now issued.

General Prideaux took the command of the western army destined to Niagara. They advanced the 1st of July, 2200 strong, exclusive of several hundred Indians led by Sir William Johnson. They landed, invested the French fort and opened their trenches. The General fell by the unfortunate explosion of a cohorn on the 20th. The American Baronet took his place, and sent for Mr. Haldimand, who with twelve hundred men had just before repelled sixteen hundred of the enemy in the defence of that post, with a considerable loss to them and none to us. Before Mr. Haldimand arrived, a strong party of thirteen hundred came from Venango to the relief of the besieged, with five hundred savages. Lieutenant Colonel Massey advanced with a detachment of five hundred men to meet them. Observing that our Indians sought an opportunity to speak with them, and fearing the effect of it, the French set up and begun the charge. In less than an hour they gave way with the loss of one hundred and fifty prisoners, the first and second in command, Morang, the Indian leader and seventeen officers, seven of whom were captains. Except the Mohawks, all our own Indians stood aloof till after the route. This victory of 23d July gave us the fort. Through the unskillfulness of our engineers, the works were unhurt; and having ammunition for only forty-eight hours more, Sir William was on the point of raising the siege. The garrison capitulated at the instance of the commandants. There were made prisoners of war to the number of six hundred and seven: their women and children were to be sent to Montreal.

General Amherst led the main body. They passed Lake George without opposition, and proceeded to the lines so fatal to us the year before. While our trenches were opening, the enemy kept in their fort, but in the night of the 26th July, blew it up and repaired to Crown Point, leaving twenty men

behind who could not find room in their boats. We lost Colonel Roger Townsend the night before, by a cannon shot in the shoulder while he was imprudently gratifying his curiosity at the trenches.

Five days after M. Bourlemaque abandoned Fort St. Frederick, and demolished the works on the approach of Rogers's rangers, and retiring with all the stores to the Isle aux Noix, at the north end of Lake Champlain, where his whole force collected amounted to two thousand men, who were in a starving condition.

Colonel Gage was ordered on the news of the surrender of Niagara, to proceed from Oswego with the western forces down the St. Lawrence to La Gabelle, while General Wolf was besieging Quebec, that the French force drawn to the two extremes of Canada, might favor General Amherst's descent upon the centre of the Colony, with an army of twelve thousand men through Lake Champlain.

On the flight from Crown Point, few doubted the reduction of Montreal, where they imagined the inhabitants shut out from the rest of the world, and so harassed as to be unable to collect in their harvest, upon the point of perishing by a famine, and by despair ready to resign themselves the moment of General Amherst's landing at St. Johns. They relied on the intelligence that the savages in the French alliance were intimidated, and conceived that the immense plunder of Niagara would be sufficient to draw all our Indians to a firm junction with the troops who were to act under Mr. Gage. But of these designs not one was executed save that trusted to General Wolfe, and this not till the 13th September. General Amherst who had advanced within thirty miles of St. John's, and burnt all the French vessels but one, on the news of the Quebec victory returned to Crown Point.

The multitude however were contented with a change of fortune so very different from what they had hitherto experienced, and contented with their successes, a veil was willingly drawn over that inac-

tivity which had disappointed our hopes of the total subjugation of the power of France on this continent.

The fort of Niagara though of earth, was respectable, and capable of containing two thousand men. On the sides it was difficult of access. It had a river on the west, the lake on the north, and on the east a morass. The ditch was large, and a great part of it wet. The soil near it, like the Seneca country, fertile, rich and level. About two thousand Indians visited it the ensuing autumn, abject and servile, because aware of their dependence on us in future for many articles necessary for their subsistence. But not a single man of the Mississagas, who inhabited the old country of the Hurons, on the north bank of Lake Erie, came there till the close of the campaign, for the French still maintained their post at Toronto, at the north-west corner of Lake Ontario, and therefore six hundred men were left the ensuing year as a garrison at Niagara.

At Oswego we built a new pentagon fort, and opened a ditch of five and thirty feet. The magazine was made capable of containing a thousand barrels. Casemates and bomb proofs were constructed, and nine companies left there for its defence, with several small vessels and a brigantine of seventy odd feet keel, mounting twenty guns. One hundred men more were posted in a small fort at the Little Falls of the Onondaga, and as many more at the western extremity of the Oneida Lake; fifteen at the eastern end, and four hundred at Fort Stanwix. A road was cut from that fortress eighteen miles across the portage to the mouth of the Wood Creek, to shorten the passage by that stream, which is more than double that distance. It was then asserted that the plain of the waters of the Wood Creek and the Mohawk River, at each end of that carrying-place, differed but two feet, which, if true, may one day give a supply of salmon and many other kinds of fish to the inhabitants upon the borders of the latter of these streams.

On the north General Amherst began a fort at William Henry, completed another at Ticonderoga, formed and began to execute the design of such a fortress at Crown Point as would comprehend a circuit of nine hundred yards. The winter garrisons of these three posts amounted to fifteen hundred men.

The defeat of the party from Venango facilitated the constructions ordered by Mr. Stanwix at Pittsburgh, where he exhausted the summer in Indian treaties and promoting our commerce with the aborigines of the south.

The provisions for the New-York troops extending only to the first of November, and General Amherst wanting their assistance for securing the ground they had gained, and to prevent the French from repairing their losses, it was necessary to reconvene the Assembly in October, and on account of the small-pox, Mr. Delancey ventured to summon them again at his own out-house in the suburbs.

General Amherst's patron was Mr. Pitt; and the Lieutenant Governor, who had hitherto studied to conciliate the graces of that general, did not lose the opportunity to applaud his campaign.

After declaring his acquisitions to be important and valuable, and approving the wisdom of his measures, he adds for justifying them,

“You must be sensible that the enemy have had very small supplies of provisions this year from France, and that most of the men in Canada having been in arms this summer, their crops must have suffered greatly. In this pressing situation it cannot be doubted, they will use their utmost efforts to repossess themselves of their strong holds, if it were only with a design of getting subsistence from our magazines; but if they know that there are respectable forts to oppose them, and find that the works are completed, they must lay aside all such attempts as fruitless and vain.”

The house wanted no incitements to continue their aid, and the same day voted the necessary pay and additional clothing suited to the season, and the day

after (18th October) were adjourned to the 4th of December.

They met then to congratulate each other upon the victory at Minden, the defeat of the French fleet on the coast of Algarva, the conquest of Guadaloupe, the reduction of Quebec, and the other successes of that memorable year, and then proceeded to the ordinary supplies. Mr. Delancey did not omit a requisition for a salary to Mr. Justice Jones; "an officer (says he) whom the course of justice obliged me to appoint;" and for obviating objections, pointed to funds by an increase of the stamp duties and an augmentation of the excise upon strong liquors.

The session ended in twenty days without a single division on any question, though upwards of twenty acts were passed, and among them a five-pound act so much before contested; but it was limited to four years.

To the governor they allowed a salary of £1800 with the £400 perquisite; gave Mr. Chambers £200 without any reference to the chief seat as full or vacant. Deducted £50 from Mr. Horsmanden's late allowance, and gave Mr. Jones £100 a year from the date of his commission, the 6th of December 1758. Of the five-pound act the committee wrote favorably to the agent. The Speaker of the present House living remote from the capital, declined any part of the correspondence, and it was left to the members of the metropolis, who expressed themselves thus in their letter of the 26th April.

"In the last session an act was passed to empower mayors, recorders, &c. to try causes to the value of £5 and under, which has been strenuously opposed by the gentlemen of the law, both out of doors and in the Council, but at last consented to for four years. As we are apprehensive that the same opposition will travel to the Board of Trade, we desire you will support the act, as it has by experience been found very beneficial, and in a few instances only occasioned any discontent; is greatly satisfactory to all ranks of peo-

ple, except some of the law, and prevents numberless suits and expenses, which in many instances amounts in the old practice to more than the sum sued for, and therefore this law is esteemed a very singular public benefit."

It was not to be doubted that if the war continued, new efforts would be directed for completing the reduction of all Canada. Mr. Secretary Pitt's letter for that purpose arriving in good season, the House was again convoked for our aid on the 11th March. The Assembly voted the like contribution with that of the last year, and there was a new emission of sixty thousand pounds to defray it, and an eight years tax imposed for sinking the bills.

The Governor had in his speech incorporated Mr. Pitt's letter, commanding him to use his utmost endeavors and *influence* towards raising the men necessary for the enterprise, which prompted to a motion of Mr. R. R. Livingston for an address intimating that a great part of the loan to General Amherst was still unpaid, and that their exertions were made, *uninfluenced* by any other motives than a sense of their duty to their king and country. But there was a majority for the negative, which is mentioned as a demonstration of his ascendancy, even in the present Assembly. They adjourned the 22d of that month.

Before they met again in May, he informed them that the whole loan was repaid, and at the request of Governor Pownall implored their charity to the people of Boston who had suffered by a conflagration which had consumed a great part of that town on the 20th March.

Though the province was then indebted to a long list of creditors for their services and losses in the war, and of many of these demands only able to advance but a moiety, still they gave out of their treasury £2500 to the poor of Boston.

Mr. Delancey passed ten bills on the 10th of June, and then adjourned them. The most remarkable of these, was one to regulate the practice of physic and surgery; professions taken up by every pretender

to the great injury of a credulous people. But the remedy was very inadequate to the evil, for the law which restrained all unlicensed practices under the penalty of five pounds for every offence, was limited to the capital, and gave the right of examining the candidates to incompetent judges, a councillor, a judge of the supreme court, the mayor and the attorney-general, assisted by such persons as they should think proper to call upon.

The Lieutenant Governor survived this session only to the 30th July, and died very suddenly. He spent the day before on Staten Island, at an interview with Mr. Boone and Mr. Barnard; the latter leaving New-Jersey for the government of Boston, and the former taking his place and command of New-Jersey. General James Prevost, Governor Morris, Mr. Walton and others, were of the party, and Mr. Delancey, as it was thought, suffered by the tart raillery of the company and a too free use of the cup; for his constitution, though not much shattered, began to give way to the liberties he had long indulged. Crossing the water for several miles in the evening air, he landed in low spirits, drank some wine and water at Mr. Watts's, and rode out to his house about a mile from town. He was found in the morning by one of his infant children gasping in his chair, and in the agonies of death; and before a physician could be called to his assistance, the vital spirit was gone. The immediate cause was supposed to be a fit of the asthma, to which he had been many years so subject, as to be unable to take his ordinary repose in bed.

The conversation of the day before certainly put the deceased to his utmost exertions; for he was treated with the familiarity of an equal in the presence of his inferiors, who had long worshipped him as a genius and character of the first magnitude. Mr. Boone, Mr. Morris, and Brigadier Prevost played off their wit in rallying some of his arts for gaining popularity; and though not a word was uttered in a manner interdicted by good breeding, yet there was gall under the disguise of politeness

and respect, which made his defence the more arduous, especially as there were three against one, with the smiles of the rest. His daily coffee-house haunts, his controversy with Clinton, his persuading Sir Charles Hardy to resign on contract for half of the salary and emoluments, the subserviency of his tools, his double claim to be chancellor and chief justice, his exaction of the high fees for land grants taken by Clinton, and his receipt of £400 yearly for the garrison, after the independent companies were removed, and a tale respecting that money, all touched with delicacy and justified with anxiety, without the appearance of contention, formed the topics of a conversation concluded with evening merriment on both sides; but when they parted, Mr. Delancey instantly grew serious, and was vexed and silent on the whole passage over the Bay.

The tale alluded to was this: Prevost commanded one of the royal American battalions, which had wintered here before. The author remarked to him in the summer of 1758, when being *hors de combat*, he spent his time unemployed at a villa near the capital, that this annual gift was a party *douceur*. He instantly protested he would exact it for his corps, and the next day startled the Lieutenant Governor by a demand, which the other endeavored to turn off with a jest. The General left him to consider of it, and receiving no satisfactory answer, notified him in form, that he should make it the subject of a letter to the Secretary of War; and at a public dinner told him, that he would certainly make that application, because it was the part of a good officer to insist on the rights of his soldiers, and leave it to the Governor to support his own honor in the denial if he could. Mr. Delancey was already intimidated, and a few days after declaring his conviction of the justice of the claim, paid down a moiety of the money, for which the General took the merit of signing a receipt in full, which the other acknowledged to be a favorable and indulgent composition. General Prevost was so much pleased with his suc-

cess, that he could not conceal it; valuing his triumph over a demagogue who held thousands in awe, infinitely beyond the spoils he had acquired.

Mr. Delancey's genius exceeded his erudition. His knowledge of the law, history and husbandry excepted, the rest of his learning consisted only of that small share of classical scholarship which he had acquired at Cambridge, and by a good memory retained. He was too indolent for profound researches in the law; but what he had read he could produce in an instant, for with a tenacious memory he had an uncommon vivacity; his first thought was always the best; he seemed to draw no advantages from meditation, and it was to this promptness he owed his reputation. He delivered his sentiments with brevity, and yet with perspicuity. He rarely delivered his opinions in writing, because his compositions did not merit even his own approbation. It was a labor to him to write, and he only supplied the matter of his speeches to the Assembly, which others put into form.

The siege of Quebec by the Canadians, and the dread of its returning to its old masters, quickened our levies, and when collected, the news of their retiring from that city in May, stimulated them in their progress. General Amherst left Schenectady in June to join an army of four thousand regular troops and about six thousand provincials, who were to make their descent into the heart of the French Colony, down the stream of the St. Lawrence, while General Murray was to come against it with two thousand regulars from Quebec, and five thousand provincials were to penetrate under Colonel Haviland through Lake Champlain. Sir William Johnson gave assurances at the same time of the effectual aid of all the warriors of the Six Nations, of which nevertheless only six or seven hundred accompanied the western army from Oswego to La Galette or Oswegatchie, when all except a few individuals thought proper to return to their own castles.

The three divisions advancing and arriving nearly at the same time in the neighbourhood of Montreal,

the whole force of Canada was driven into the island, and Mr. Vaudreuil the French Governor, being surrounded and unable to make any resistance, surrendered all Canada on the 8th of September, and General Amherst returned to New-York the latter end of September, and received the congratulations of a people exulting in the accomplishment which we were taught by our ancestors to pray for, as an event essential to the felicity and safety of all the British Colonies in America.

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## CHAPTER VII.

*From Lieutenant Governor Delancey's death, to the appointment of Lieutenant Governor Colden, during the absence of Sir Charles Hardy.*

ON Mr. Delancey's death the government devolved on Doctor Colden, who immediately came out from his rural retreat in Ulster County, and at the age of seventy-three took up his residence at the province house in the fort, as president of the Council.

It was the general wish that he would instantly fill up the vacant seat of the Chief Justice, the ministry having not long before trusted the dispensation of justice in other colonies to persons of such character as filled the multitude with uneasy apprehensions. Jersey had been mortified by the arrival, first of one Ainsley, who was raised to be Chief Justice from the low station of treasurer to a turnpike in the north of England, and when he died, by a successor still more contemptible, of the name of Jones, a Newgate solicitor, who left his wife, lady Oliphant, in the arms of an adulterer, by whose interest he was promoted and sent out of his way.\*

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\* Ainsley was said to be recommended to the Earl of Halifax by Lord Ravensworth, and Jones by Lord Chief Justice Welles of the Common Pleas.

Mr. Colden was sounded on the propriety of guarding against similar appointments, but delivered his answer in terms of ambiguity; and while it was unknown that he meant to compliment the Earl of Halifax, then first lord of trade, with the nomination, and take that opportunity of showing his own zeal for the interest of the minister, an attempt was made to engage Mr. Morris to change his place in New-Jersey for the same station in this Colony.

It was apprehended that Mr. Colden, who had heretofore given so much offence, might, to gain popularity, be persuaded to join in the recommendation; but at the same time it was foreseen that neither Chambers nor Horsmanden would approve of any other person than themselves.

Mr. Watts suggested to Governor Boone of New-Jersey, that his province was happy in Mr. Morris, and added a wish that he had the vacant seat in New-York. This was privately communicated to General Prevost, who consulted the author on the subject, who spoke to Mr. Morris, and he consenting to the trial of our interest, we all met (Mr. Morris and Mr. Walton who was his friend) at General Prevost's in Flatbush. The author was to engage his father's approbation, and Mr. Walton, flattering himself that he could procure the junction of Mr. Watts and Oliver Delancey, he made the attempt, and pressed it with the utmost earnestness, but was unable to prevail with either. The only fruit of it was exposing Watts to the resentment of Mr. Boone, by his denial of what the governor had alleged, and to the contempt of a few who were informed that he was brought to confess that he had forgotten what he said; and thus the president, unsolicited upon this delicate subject, prosecuted his own design of leaving the appointment to the plantation board.

On the 22d October he made his first speech to the Assembly, and to win the Delanceys, who detested him, he applauded the superior talents of his predecessor, and to recommend himself to General Amherst, passed encomiums upon the conquest of

Canada. He then demanded a support, and assured them of his concurrence in every measure conducive to the prosperity of the Colony, without even taking the ordinary condition of its consistency with his duty to the crown.

Mr. William Livingston penned the address offered in these triumphant moments of joy, and made the congratulatory echo louder than the first sound. Alluding to the reduction of Canada, the House, to pre-engage the retention of it at the peace, speaks of that event as replete with innumerable advantages to the nation in general, and exults in our deliverance "from the devastation of a cruel and barbarous enemy; rather bent on the destruction of mankind, than waging war either for their own defence, or even from motives of ambition or conquest." Again, "no consideration (say they) shall induce us to regret the blood and treasure expended in facilitating this inestimable acquisition, save only (to which we are confident the wisdom and honor of the nation will ever disdain to submit) the surrender of this most important conquest, which, in possession of the crown, must prove to Britain the source of immense riches; and if retained by so perfidious a people, would expose us to the keen revenge of a defeated enemy, who, unreclaimed by our example, and by our clemency unsoftened, would doubtless relapse into their native barbarity, and retaliate our levity with more signal acts of inhumanity and bloodshed."

The session was protracted with great concord to the 8th of November, when Mr. Colden assented to nineteen bills, without the least objection to that for an annual support, or the prolongation of the currency paper bills; verifying an old remark, that the confidants of governors often advise measures which, when themselves are responsible, they will not pursue.

By one of the acts he took a salary of 1800*l.* a year, with the ancient *douceur* of 400*l.* for a garrison, consisting only of his own family.

There was nevertheless some inquietude without doors. The merchants were chagrined at the inter-

diction of their commerce with the French and Spaniards of Monte Christi; when, by the superiority of the naval strength of the nation, and the success of our privateers, the enemy were no longer able to navigate the West India seas. We drove a very lucrative trade with Hispaniola under letters of safe conduct, and afterwards without them at the post above mentioned. Nearly the whole produce of that valuable island came to the British Colonies in exchange for provisions and the manufactures of the northern country, and passed to Europe in English bottoms. Both the British and American merchants had grown opulent by this commerce in spite of all the calamities of the war, and the latter felt the check now given to their gains by orders issued at Mr. Secretary Pitt's instance, excited, as fame reported, by General Amherst with the utmost impatience. Mr. Colden nevertheless enjoyed a perfect calm. The enemies he had formerly made were not recovered from the terror inspired by the death of the Lieutenant Governor, and having with their popularity lost their power, they felt no inclination to renew their hostilities; nor were they yet without hopes from the timidity of his advanced age and the address of Mr. Watts, that he would voluntarily consent to be led. In a word, the weakness of both parties left him undisturbed, while the number of the candidates for the vacant seat upon the bench produced condescensions friendly to his ease, and flattering to his pride.

But this appearance of power having nothing to support it, lasted but a moment. Mr. Oliver Delancey having a seat in Council, and the Lieutenant Governor's son James aiming at a place in the Assembly, and Mr. Jones the former Speaker being restless for his old chair, Mr. Colden took fright on the news of the death of the king, and unwillingly listened to the doctrine that the demise had wrought a dissolution of the Assembly. After some hesitation he issued the new writs, returnable on the 3d of March 1761.

Though there was a change but of seven members, the return of Messrs. Jones and Cornel for Queen's County being set aside, yet from their fortunes, the Livingston party now added greatly to their strength.

The speech (on the 10th, to which they had been prorogued by an irregular proclamation) laments the death of the king, applauds the virtues of his successor, and leaves it to the House to think of domestic provisions, till the instructions then expected enabled him to state the requisitions for the ensuing year.

The Assembly gave assurances of aid when wanted, concurred in a loyal address to the new king, and adjourned to the 24th of that month; when having received Mr. Pitt's letter, the president demanded an aid of men equal to two-thirds of our levies on the last campaign. They voted seventeen hundred and eighty-seven men, and fifty-two thousand pounds to defray the expense of the pay and clothing, of which the whole, except the sum of seven thousand pounds, was money given out of the parliamentary reimbursements for former exertions. The act for this purpose was passed on the 4th of April, and the House were dismissed to the 4th of May. Then there was a short session for a fortnight, in which Mr. Colden put a negative upon two bills, to remove doubts arising respecting the transactions between the death of the late king and our notice of it here, and to compel to the appointment of the judges for the supreme court in future on the tenure of good behavior. The first was framed on the supposition that the laws enacted in autumn, by one of which he had his support and the proceedings of the supreme court wanted confirmation, and the last was prompted by the general wish of the people, that the judges might be rendered independent of the crown, and the vacancy in the chief seat be no longer left open to the danger of a succession in favor of such mean ministerial hirelings as had been sent to New-Jersey. Mr. Colden was inflexibly set against both. He had indeed offered the chief justice's place to the author's father imme-

diately upon the death of Mr. Delancey, upon the tenure of the king's bill, informing him at the same time as a secret, that he should not make that proposal to either of the puisne judges; but after Mr. Smith refused, he took up the resolution to leave it open to the minister of the day, and to hold all the rest of the judges on the renewal of their commissions in a dependence upon the crown. He could not have pursued a measure more universally disgusting, nor have given a better handle to the disappointed expectants of the vacancy, or the numerous friends of the present judges who, with great reason, complained of his zeal to enforce an old instruction, which Mr. Clinton broke when he appointed Mr. Chambers to succeed Mr. Phillipse, and which Mr. Delancey had disregarded without censure when he constituted Mr. Jones to be the fourth judge on the bench.\*

While the bill relating to the judge's commission was depending, there was a meeting of both Houses, on intimation that he would give his assent, and to obviate if possible the objections he had urged in justification of the conduct he meant to pursue. Some were in favour of increasing the allowance beyond the present mean stipends of 300*l.* to the chief justice; 200*l.* to the second judge; 150*l.* to the third, and 100*l.* to the fourth, and the constituting a permanent fund for their annual discharge. But others, disinclined to the augmentations, predicted that the vacancies would in future be filled up by mean and ministerial dependants, and the bill by their division of sentiment was sent up, subject to the full force of Mr. Colden's exception.

There were others who thought a fine opportunity was then lost for gaining an independent unbiassed bench, and these contradictions gave rise to mutual

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\* I have seen Mr. Clinton's apology to the Duke of Newcastle, and the Earl of Holderness's answer, declaring the king's approbation of the commission to Mr. Chambers on the same tenure with Mr. Delancey, and that to Mr. Phillipse the predecessor of Mr. Chambers.

reproaches, with which Mr. Colden was not a little diverted; and a confidant of his said, "Neither party had any thing to boast of, because he had predetermined to object to their augmentations as inadequate to the dignity of the officers, and thus elude their importunity, even if both Houses had concurred in doubling the salaries.

The judges at first appeared to differ from the opinion of the bar as to the effect of the late demise of the crown upon their commissions. But their fears rising on the approach of the term, they applied in form for a renewal of them on the old tenure. Their request was instantly refused by Mr. Colden, who advised them to sit upon their old commissions, and the royal proclamation dated at Saville House. Upon mentioning their doubts, whether that proclamation was issued under the great seal, he let out his own secret. "Yours (says he) are as good as mine, and you'll stand on the same foundation." They replied very pertinently, "You may run risks and be justified by necessity; you can remove our doubts without incurring blame, and it will be expected that you do all the good in your power." The judges sat to prevent a discontinuance of process, and in hourly expectation of being relieved by the arrival of Mr. Pratt, a Boston lawyer, who had obtained a mandamus for the seat of Chief Justice by the interest of Mr. Pownall, to whom he had been useful when Governor of the Massachusetts Bay.

But if he lost favor on one side of the water, he increased it by stratagem on the other: the king promoted him to the rank of Lieutenant Governor. Under a dread of the clamors of the multitude, he wrote to his superiors, declaring his apprehensions that he should be compelled to give way to the proposition, and thus lay the foundation for a positive command against any future compliances. His letters became the subject of a report from the Board of Trade to the king on that question, in which their Lordships observe:

That the people of New-York could not plead the example of the mother country, because, say they, the change which the tenure of the judges' commissions underwent at the revolution in this kingdom, was founded upon the most conclusive and repeated proofs of arbitrary and illegal interposition under the influence of the crown, upon points of the greatest importance to the constitution, and the liberty and rights of the subject. It was not however by the tenure of their commissions alone that they were rendered independent, but such salaries were settled on them as not only rendered them less liable to be corrupted, but was an encouragement for the ablest men in that profession, which qualified them for such high trusts.

“The same circumstance does in no degree exist in the American Colonies, whereas, there is no certain established allowance that may encourage men of learning and ability to undertake such offices; your Majesty's Governors are frequently obliged to appoint such as offer among the inhabitants, however unqualified to sustain the character; and though a more fit person should afterwards be found, yet if the commission was during good behavior, such unqualified person *could not be displaced*.” They add,

“We are sorry to say that late years have produced but too many examples of governors having been obliged, for want of such establishment as might induce able persons to offer their services, to confer the office on those who have accepted it merely with a view to make it subservient to their own private interests, and who, added to their ignorance of the law, have too frequently become the partisans of a factious Assembly, upon whom they had been dependants, for their support, and who have withheld or enlarged that support according as the conduct of the judges was more or less favorable to their interests. It is difficult to conceive a state of government more dangerous to the rights and liberties of the subject; but aggravated as the evil would be by

making the judges' commissions during good behavior, without rendering them at the same time independent of the factious will and caprice of an Assembly, we cannot but consider the proposition as subversive of all true policy, destructive to the interests of your Majesty's subjects, and tending to lessen that just dependence which the colonies ought to have upon the mother country."

Their Lordships take notice of a report of the Attorney and Solicitor General on a similar law in Jamaica, and of their own board on another passed in Pennsylvania, quote Mr. Colden's letters as consonant with their sentiments, declare, if he has yielded his consent, he deserves the royal displeasure, and advise a general instruction prohibiting in all the royal provinces, commissions during good behavior.

But the Lieutenant Governor's letters were secrets when the Assembly met him again on the 2d September, and gratified his requisition for a continuance of pay with provisions to one hundred and seventy-three men for the defence of Orange and Ulster against the incursions of the savages, or he would have had more serious proofs of their disgust, already excited by the rejection of the late favorite bills, which were both immediately renewed, and in a few days after sent up to the Council. He had nevertheless some intimations of their discontent by a bill on Mr. Cruger's motion to interdict stage playing, by a set of strolling comedians whom he had permitted to set up a theatre, and by his expression of confidence in the abilities and patriotism of General Monekton, who was then in hourly expectation of the arrival of his elevation to the chief command of the Colony.

It has been already observed that Mr. Jones, though a judge of the supreme court, had appeared as a candidate with Mr. Cornel for a seat in the Assembly. They both lost their aims. The sheriff's first return was set aside for irregularity, and at a new election the second was controverted on a scrutiny

which left a majority against Mr. Jones.\* The elections of Mr. Holland for the county of Richmond, and Mr. Schermerhorn for the town of Schenectady, were also disputed before the House; and it may be of use to state some of the points resolved by the Assembly in the exercise of their judicial authority, respecting the qualification of their own members.

1. That the names of voting electors not returned on the poll lists, shall be received and counted.

2. That the possession of the remainder, gained on the death of a tenant for life but twenty-two days before the test of the writ of summons, though the estate might have been devised thirty years before, gives a right to vote.

3. That the acquisition of a freehold within three months before the test, suffices, if it was not fraudulently obtained.

4. That an actual possession within three months is not necessary; and,

5. That a man deaf and dumb from his nativity has no vote.

Shortly before the term of October, and when Mr. Pratt was not yet arrived, Mr. Colden, pushed by the dread of the discontinuance of all process, and the clamors it would naturally excite, resolved to bring the judges to the test; declaring in Council that unless they would take new commissions during pleasure, he would find others for their places. To the surprise of the board and of the whole colony, two of them consented, but only *pro hac vice*, to save the term in the absence of Mr. Pratt. But Mr. Jones, who resided in the country, learning by the way that this humility was imputed to meanness, turned back and absented himself the whole term, giving out that he would not accept a commission upon so base and precarious a tenure. No distress could exceed Mr. Chambers's the instant he discovered the public disapprobation of his conduct, and that his new commis-

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\* But this decision was suspended till the close of the year, when Mr. Zebulon Seaman and Mr. Cornel took their seats as the members for Queen's County pursuant to the election in April preceding.

sion was thought to leave him as much embarrassed as before; Mr. Colden's authority to give the last under Sir Charles Hardy's commission being considered as invalid from the end of six months after the king's death. Mr. Chief Justice Morris stated this exception to him in term time, and it filled him with such terror that he implored the Attorney-General to bring no criminal cause before them, and to reject motions in form for that purpose. The term was no sooner ended, than Mr. Pratt arrived. Mr. Chambers then offered his first commission to Mr. Monckton, who at that time declined any agency in the civil department.

When Mr. Colden and his Assembly parted on the 11th September, he had no influence upon either of the great parties into which the colony was divided. The eyes of all men were turned to General Monckton, for it was not certainly known that he was destined to the command of the troops which had been several months collected on Staten Island on a secret expedition to the West Indies.

He resided chiefly at that camp, where, agreeably to Mr. Secretary Pitt's letter, he performed the ceremonies for investing Mr. Amherst with the insignia of the Knight of the Bath, until the arrival of his commission in the Alcide ship of war on the 19th of October.

Colden soon learnt what Mr. Monckton was at a loss to discover, that it was not accompanied as usual with a book of instructions, and it had been hinted by the Lieutenant Governor to a third person, that he thought the want of it an objection to the General's entering upon the command. Of this, Mr. Monckton was not apprised till just before the day appointed for its publication, and after Mr. Colden's orders were out for arraying the militia as usual on such occasions, it became him to examine into the weight of this exception so unseasonably started, and which he apprehended the Lieutenant Governor would use every argument to induce the Council to listen to and approve, when he offered himself for the oaths.

The author was consulted the preceding evening by Mr. Boone, (who had presided as Governor in Jersey, a place which he now left to Josiah Hardy, Esq. a brother to Sir Charles, being himself promoted to South Carolina,) and delivered his opinion in writing, which was in substance, that the commission conveyed the authority and the law gave the rule according to which it was to be exercised; that the Council, having been appointed by the privy signet and sign manual of the late king, and continued in office by his present Majesty's proclamation, wanted no new appointment to enable them to administer the oaths; and that therefore the government under General Monckton could be organised without any book of instructions.

When Mr. Monckton had produced his commission to the Council on the 26th October, and it was read, the Lieutenant Governor asked for the instructions to enable the board to proceed. The other replied that he had none, and hoped never to have any, that he might be at liberty to copy after the example of his royal master. Not a member of the board stood by the Lieutenant Governor, and the oaths being administered, there was a procession and a republication of it as usual at the town hall. The militia being drawn up, and an immense multitude expressing their joy in loud and repeated acclamations.

Mr. Colden's opinion, which soon took air, had no influence on the people. Addresses and congratulations were presented from all public bodies, without naming the Lieutenant Governor. It being then full term, he had one from the judges and the bar, and another from the grand jury, which it seems gave no small offence to Mr. Colden, merely for hinting that the public security was enhanced by the high birth and opulence of the new governor.

It would be unfair not to add that the profession of the law gave this Governor a public entertainment, in return for a very genteel one at his expense to all the gentlemen of the capital, and still more so to

conceal some private anecdotes. Anecdotes relative to Mr. Monckton's request for securing the moiety of the salary and perquisites of the government that might accrue on the expedition to Martinique, which he was appointed to command.

It was Governor Boone who in his name requested the author to frame some instrument for the purpose. He informed him that the general had resolved to give his own share to Mr. Colden, but altered his mind, after his project for exposing him to the scoff of the public, by excepting to the publication of his commission. That he had already written to him, asserting his claim to a moiety, adding, that he should not sail before it was secured; that he had received no other than a general promise to comply with the king's instructions whenever they arrived. That Mr. Monckton was resolved to waste no time in a captious correspondence, and had now resolved to offer him a draft, and if he refused to execute it without reasons, to suspend him without ceremony.

The author devised a bond for the payment of a moiety of the salary, perquisites, and emoluments, and to account upon oath if required, and sent the instruments with blanks for the surety and penalty. Two days after (13th November) General Monckton desired to know why the oath was proposed; to which it was answered, that himself taking the chancellor's chair on his return, he would lose the benefit of that court to compel a discovery, if that should be necessary, and that the bond to account upon oath was expedient to prevent his losing the equitable relief which every other subject enjoyed by the laws of this country.

The general showed the author an instrument in the hand writing of Mr. Banyer, the deputy secretary which Mr. Colden had proposed for his security. It was an indenture consisting of covenants, reciting that, pursuant to the royal instructions to former Governors, a moiety of salary, fees, and perquisites, were payable to the Lieutenant Governor in the absence of the Governor in chief, and agree-

ing that such share should be paid to Mr. Colden and the other half be received by Mr. Banyer for the use of General Monckton, unless otherwise applied by his Majesty's instructions, "hereafter to be received."

I then sent him a tripartate indenture between the two Governors and the secretary. It recited that by former instructions the Lieutenant Governor was to receive a moiety of the salary, perquisites, and emoluments, (these being the terms in the 99th article to Sir Charles Hardy) that Mr. Monckton was about to leave the province, that he had no instruction, but expected one of that import, and that the government might fall on Mr. Colden. Then they were both made to covenant, that all profits should pass into Mr. Banyer's hands, to be equally divided if such instruction came, and if not, the whole to Mr. Monckton. Covenants followed for Mr. Banyer to receive and obtain all these profits, and to render accounts *upon oath* when required by either of the Governors, and to pay them their respective shares. And with this indenture I proposed a bond from Mr. Banyer and his surety to Mr. Monckton, for the performance of the covenants.

Mr. Monckton embarked on the 15th of November, but before he took leave expressed himself to this effect. "After much shuffling, the matter is settled. Colden objected to the covenants as putting him in the power of his servant, and exposing him to the world. I then sent him the bond, requiring his execution of it without any further trouble. Banyer came from him with an objection to his being made liable during my commission and absence. I was about to throw all the papers into the fire, but Watts then with me, prevented me. I ordered Banyer to bring me an abstract of all the patents for lands and commissions for offices since the death of Delancey. He declared he had no doubt Mr. Colden would sign, if I would not permit any alteration. Colden's reason is, and so he told me, that he hoped to procure an instruction for the whole profits in my absence

Watts interposing, Banyer took back the bond, asking whether, if the Lieutenant Governor executed it, he should bring the abstracts. I replied, you will obey your orders, and bring back the draft of the bond that I may compare it with the copy that it may be executed."

On the 14th of November the fleet, consisting of one hundred sail, left the Hook for Martinique under convoy of the *Alcide* of sixty-four guns, and the *Devonshire* of seventy-four guns, two of fifty and one of forty guns; and thus the government devolved again on Mr. Colden, who five days afterwards opened a new session, with a passion, first raised by the two law bills above mentioned, and wound to an excess of indiscriminate rage at the whole profession, bench and bar.

The objects to which he pointed were three—The slow proceedings of the courts, tippling-houses, and the annual support, but upon the first he dwelt most.

"Complaints (says he) of the dilatory proceedings of the courts of law, and of the heavy expense in obtaining justice, are so general and frequent, that they well deserve your attention. Therefore I recommend to you to inquire into the grounds of these complaints, and if found just, to apply a remedy adequate to so great an evil. Without doubt it is the duty and in the power of the legislature to give relief in every public grievance. The delay of justice is a denial of it for a time, and is often, when attended with great expense, of more consequence to individuals than the obstinate refusal of it. The security of government and the well-being of society, are founded on the equal distribution of justice, which cannot prevail in its proper extent, while the expense of obtaining it is insupportable to many."

The address demonstrated that the House was neither disposed to be very obsequious to his humor, nor ignorant of the true motives of the speech.

They intended to have puzzled him by a call for the proofs; but this he obviated in his answer to the

address of the council, by quoting the 32nd instruction to Sir Charles Hardy, recommending speed in the administration of justice, which being as old as the revolution, and known to be common to all the provinces under the immediate government of the crown, gave rise to some ridicule. The Assembly therefore resolved not to teaze him at the expense of their own dignity, and contented themselves with observing that they would not permit the colony to suffer by Mr. Monckton's absence, but that its interests would be advanced by his concurrence in several bills preparing for the defence and security of the liberties and properties of the subject. They agree in the expediency of dispensing justice with despatch; but that he might feel the sting of the common censure upon the high fees taken for patents, in which he was doubly interested as Governor and joint surveyor-general with his son, they add\*—

“As the complaints your honor mentions probably arise from the want of a legal† establishment of fees, we cannot help thinking a general establishment of the fees of *all the officers of the government* will put a stop to these, as well as to several other complaints of the like nature.” At the close, they promise “all attention to the internal welfare of the colony; with confidence that nothing tending to that end can be thought by any who have the honor of serving his Majesty, inconsistent with their duty.”

The answer shows a spirit ready for a battle, and was supposed to have been penned by Mr. Pratt—

“You may assure yourselves of my concurrence in every thing for the benefit of the country, of which each of the branches of the legislature have an equal right to judge. Methods may be proposed, however,

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\* The Governor took £12 10s. for every thousand acres, and the surveyor-general five pound more per thousand.

† All fees had for a long time been regulated by ordinances of the Governor and Council, every one of which had expired. Many attempts had been made to establish fees by a law, but lost by the parsimony of the Assembly. The act in Mr. Van Dam's time was repealed by the king.

for obtaining a real benefit inconsistent with the English constitution, or, under the pretence of a benefit, a small dependent State may attempt to set bounds to, and restrain the rights and prerogatives of the king of Great Britain. In these cases, though the benefit be real, the method proposed for procuring it, may be inconsistent with the duty of every officer who has the honor to serve the crown, especially if the same benefit may be more effectually obtained by the methods to which no exceptions lie."

It was easy to discover that the Lieutenant Governor foresaw the renewal of the old bill for confirming the acts and judicial proceedings of the last fall, and that which was still more obnoxious to him respecting the tenure of the judges' commissions. While these were on the anvil, he sent a message, insisting on an allowance to Mr. Pratt, beyond what had been usual ever since the establishment of the salary of a Chief Justice in 1715. The Assembly, nevertheless, resolved, "As the salaries usually allowed for the judges had been, and still appear to be sufficient to engage gentlemen of the first figure, both as to capacity and fortune in the colony to accept of these offices, it would be highly improper to augment the salary of the Chief Justice on this occasion."

While the bill respecting the tenure of these commissions lay with the Council, the lower house withheld that for the support. Both branches had the same object in view; but the upper house were apprehensive that if they passed the former, Colden would make it a pretext for justifying his appointment of Mr. Pratt upon the new tenure, and leave the other judges in their present condition. The next device therefore was to tack a condition to the salaries, as the support bill, rendering them payable *only* on their holding by the safe tenure above mentioned—they proceeded upon a presumption that he would on that account reject the bill, though it gave £2200 to himself. They were most egregiously mistaken; for on waiting only for the receipts of a

joint address to the King on his nuptials, he visited the Council, and *meanly* implored their assent to that bill, and to screen them from blame, consented to an entry, that they concurred at his instance. The Assembly now in their turn became humble supplicants to the Council, that the other bill might not pass that House, lest the Lieutenant Governor should gain a complete victory; and from the common antipathy to Mr. Pratt, they obtained this boon, and thus all parties were disgusted. The bill to settle scruples occasioned by the demise of the crown, sunk also, as connected with that respecting the commissions, and after this third defeat, they were heard of no more.

At the passing of the acts on the 31st of December, the session would have ended, and the partition bill would have been lost, if it had not been suggested to the Lieutenant Governor the propriety of some apology for not assenting to that necessary law. It was a fortunate thought, for he hastily declared that if the House would adjourn for four days, and free that bill from some objections, it should have his consent. The author's father, who knew its importance, procured a note of the articles excepted to, and endeavored to obviate his objections by such alterations, though not injurious to the main scope of the bill. These were produced to the Council at a meeting on the 3d of January, the day before that to which the House was adjourned, and sent to the Lieutenant Governor for his perusal. To some he yielded, in others they made concessions to please him.

Both Houses came together when the altercations with the Governor were carried on for four days, and with reluctance at last he consented to a new engrossment, and having passed the act, he prorogued the Assembly.

The projector of that part of this law respecting the partition of lands, being called to watch the Lieutenant Governor's various exceptions to it, was a witness to the singular irregularities above related.

though no notice is taken of them in the journals of the House, for, according to their form, there should have been a prorogation, and a new bill with three readings in each House.

If the Lieutenant Governor had been gratified, there would have been no balloting for the lots till all objections to the proceedings had been heard and determined by the supreme court, nor any out lines run to ascertain the tract without the surveyor-general's approbation. The Council and Assembly would agree to neither of these alterations. The first exposed to tedious delay and enormous expense, and the last subjected the proprietors of undivided lands to the arbitrary caprice of an officer, and opened a door to corruption. The contrariety of sentiments upon this point gave rise to the double lines for the contents of the tract, and the distinction between the parts disputed and undisputed, more particularly mentioned in that useful act, which has greatly contributed to the cultivation and settlement of the colony, and enhances the estates of thousands who before estimated them as of little or no value.

It has been already observed, that the Lieutenant Governor assented to it unwillingly. It is upon the information of a member who having, after much conversation on that subject with but little hope of success, dropped these words at parting: "And is there then nothing, Sir, which you are willing to do for the country?" Struck with this spirited reproof, he replied, "Well, copy your bill as it is altered, and I'll come up and pass it."\*

The judges being all unprovided for, Mr. Pratt, whose narrow circumstances made immediate supplies necessary, despaired of all relief, unless his patron could procure it by dint of interest at home out of the quit-rent fund, and waited only the mending of the roads to return to his native country.

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\* Robert R. Livingston was the chief manager in the irregular messages relating to these amendments.

He suffered from Mr. Colden's patronage, and nothing so much contributed to the general odium against the Chief Justice and his patron, as Mr. Hardy's adventurous generosity in Jersey, who by his renewing the judge's commissions during good behavior, taught this colony to believe that it was choice and some sinister motive, and not a dread of administration that prompted Mr. Colden to stickle for a dispensation of justice under the control of the crown.

It was therefore with a malignant pleasure that the public soon after the session discovered Mr. Colden's late promotion to the rank of Lieutenant Governor was not the reward of merit, but the effort of low craft and condescension.

To gain an interest with Mr. John Pownall, a clerk to the Board of Trade, who had the ear of the Earl of Halifax, and to raise the idea of his being able to influence the Assembly, he offered him the agency of the colony; a bait to which the minister could not be indifferent.

Pownall's good sense and experience taught him to believe that a donation so imprudently liberal would soon be recalled, and sagaciously declining it, proposed that the representation of the Assembly should rather be trusted to his friend Mr. Burke. He requested this of Mr. Colden, who soon after received the reward of his art in the commission to be Lieutenant Governor. It now required some address to conceal from Pownall that want of influence, without which his friend could not succeed.

Having attained his own end, he intimated that there would be difficulties to bring in a person so little known to the prejudice of Mr. Charles, on whose account some were moved with compassion.

Pownall saw himself entrapped, and that he had not only missed his aim, but was exposed to the resentment of the old agent.

With professions that he meant not to interfere to his prejudice, he revealed to Mr. Charles all that had passed, and gave him copies of the letters which

were now transmitted to the committee of Assembly, who had for some time managed the correspondence with the agent on so serious a subject. The reader ought to see the proofs, which I insert with the answer from the committee.\*

\* CHARLES TO THE COMMITTEE.

*Golden Square, London, 19th November, 1761.*

It may not be improper in me to acquaint the General Assembly that Mr. Pownall having desired an interview with me to communicate some letters that had passed between him and Mr. Colden, did inform me on the 12th inst. that the Lieutenant Governor had some time before signified to him, that the agency of the colony would become vacant, and had made an offer of it to him, which he said he had refused as incompatible with his present station, but that he had thereupon recommended a Mr. Burke for the employment. He then went on to tell me how much he was surprised to find by a late letter from Mr. Colden, that this was to be effected to my prejudice, which he said he never meant, and was far from wishing; for that he had no otherwise recommended Mr. Burke than upon the suggestions of Mr. Colden, that there would be a vacancy, and then read to me the Lieutenant Governor's letter of the 12th of August, and afterwards sent me copies from which the enclosed ones are faithfully transcribed. I suppress my own reflections on this matter, and will only take leave to assure the House, &c.

COLDEN TO POWNALL.

*New-York, August 12th, 1766.*

Sir,

When I wrote to you on the 16th May, I had not so far recovered from a dangerous illness that seized me in April, as to be able to converse freely with the members of Assembly in their last session, as I proposed to have done in relation to the agency for Mr. Burke. Since that time the Speaker and principal members have been in the country. I have called the Assembly to meet the first of next month. At that time I shall use my utmost endeavor to serve Mr. Burke, for I have it sincerely at heart, whether I continue in the administration or not. The principal objection is that he is not known to any person in this place, which I can no otherwise remove than by your recommendation of him, which I hope will have great weight. Some likewise are moved with compassion for Mr. Charles who they imagine will be under difficulties if the agency be taken from him.

On the 17th July I received the honor of his Majesty's commission, appointing me Lieutenant Governor. I think myself extremely obliged to your brother and to you on this occasion, as I make no doubt but his and your good offices with my Lord Halifax have contributed much to it.

General Monckton's commission to be Governor in chief of this province is expected with Governor Hardy, who I am told was to set out in the beginning of July last. It is probable, therefore, that the duration of

The royal requisitions for the operations in the West Indies brought Mr. Colden and his Assembly together again in March.

my administration will be very short. This, however, does not lessen the obligation I am under to my friends. My appointment does me great honor as a mark at least of his Majesty's approbation, and of my Lord Halifax's favor. In whatever situation I may be, it will give me the highest pleasure to serve you in any shape, and I beg of you to lay your commands upon me, which I shall esteem as an honor to your most obedient servant.

CADWALLADER COLDEN.

#### POWNALL TO COLDEN.

*London, February 9th, 1761.*

Sir,

When I took the liberty to request your interest in favor of Mr. Burke to be agent for New-York, I asked it only in case of a vacancy, which you in your letter to me supposed would happen; but it was very far from my intention to request any favor for him to the prejudice of Mr. Charles the present agent, whom I really believe to be much better qualified to serve the province in that character than any other man, and therefore for his sake as well as for the public, I shall be extremely sorry if any misapprehension of my request to you should be of disservice to him.

I am, Sir, &c.

JOHN POWNALL.

#### THE COMMITTEE TO CHARLES—*Extract.*

Mr. Colden has never recommended to the House or to any of its members that we know of, either Mr. Pownall or Mr. Burke. He has indeed proposed to a few members the appointment of another agent, and desired that the House would join him in appointing a new one. This when mentioned, was laughed at, and treated with the contempt it merited. The General Assembly will not suffer any Governor to nominate or recommend an agent for them, and it was great presumption in Mr. Colden to mention any thing on that head. We are very certain that Mr. Colden, when he offered the agency to Mr. Pownall, must have known that it was not in his power to get any person appointed by his influence or recommendation. The motives that moved him therefore to make that offer, could only be to get Mr. Pownall's interest with Lord Halifax to procure a Lieutenant Governor's commission. This is evident from his letter of the 12th of August, of which you sent us a copy. It thereby appears that he had received the commission, and that he was contriving excuses immediately to get quit of his promise. Mr. Colden has probably taken great merit to himself with his Majesty's ministers in regard to the forwardness and zeal shown by the General Assembly for his Majesty's service in raising forces, &c. If he has, it is unjust; for we can with truth affirm, that it was not on account of any interest or influence he had with the Assembly, or the people of this colony, that they have come into the measures proposed by his Majesty's ministers, but their zeal for the public service only.

Though the aid demanded was nearly equal to their contributions before the conquest of Canada, their contempt of the Lieutenant Governor extreme, and though the public debt exceeded £300,000, and we were annually assessed a £10,000 tax to discharge it, yet the Assembly did not hesitate in promising to go beyond what might justly be expected, rather than suffer the least shadow of an imputation to be laid on their zeal for the king's service.

It was however a question of great moment whether they ought to set the precedent of levying 479 men as required, to complete the king's regular regiments; and to prevent it, they gave their aid in the form of a loan, "to be repaid when his Majesty in parliament shall think proper." After a few days the aid for this purpose and another to levy, pay and clothe 1787 men on the continent, with a few others of smaller moment were passed, and the House was adjourned to the 13th of April.

But for Mr. Robert R. Livingston, who devised this expedient of a loan, the credit of that contribution would have been lost, for the House were extremely jealous of raising money to recruit soldiers for the standing army of the nation, especially as forts requiring large garrisons were constructing in the interior country, and apprehended to be now unnecessary, unless the minister's design was to curb the colonies, and artfully to bring us to bear a part of the expense. They yielded with reluctance out of regard to the exigency of the day, the mother country being drained for the German supplies, and because they were not only desirous to give success to a conquest of Louisiana and the Mississippi settlements, but to prevent suspicions inauspicious to their wish that Canada at the end of the war might be retained by Great Britain. These considerations led them to an entry of their vote as unanimously carried, though many were at heart opposed to it. Mr. Livingston observed to them, that if the money was unpaid, no more could be asked, and if returned, it would be confessed to be a loan: and in aid of his design, it

was suggested at a meeting of the Speaker and several other members, that it would be proper to recite in the preamble of the bill, their views of the necessity of this unusual contribution for our own immediate safety.

The administration of public justice now called loudly for more than ordinary attention. Mr. Chambers had made a solemn resignation of his place in November, and just before January term, Mr. Horsmanden had sent his commission enclosed in a letter, which (as Mr. Colden was in distress by the last illness of his lady) he authorized Mr. Banyer to deliver when most consistent with decorum. Mr. Jones had never yet taken up the commission issued *pro hac vice*, and left for him on the court table. Mr. Pratt was therefore alone in January term, and receiving nothing, declared his intention to leave the province for Boston.

With an apprehension of a total discontinuance of all process in the term of April, Colden on the 24th of March, demanded a categorical answer from Horsmanden in full council, to the question, whether he would serve or not. He replied, his commission was already resigned, and that he would never sit under it.\* The Governor asked, whether he would accept a new one during pleasure; adding, that if he refused, the public distress should be represented to the king's ministers. The other desired time to consider, and two hours after consented to take the place of *second* justice, with a declaration that no services were to be expected from him on the annual river circuit. A letter was the same day sent to Jones for his final resolution, and he too submitted to resign the credit he had acquired by the contempt he had put upon the *pro hac vice* commission as before related, and again when being impatient of a total degradation on the decision of the Assembly,† giving the seat he

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\* December 9th 1761.

† Mr. Banyer offered the letter enclosing it, but the Lieutenant Governor without breaking the seals ordered it to be returned. He boasted of it as an act of generosity, considering the provocations Mr. Horsmanden had given him during the party feuds in Mr. Clinton's administration.

expected to Mr. Seaman; he had resolved to have gone to the bench under his first commission from the late king and the Saville House Proclamation, till he was told after coming to town, that the last commission had revoked the first, and that he must act under that or not at all. Mr. Jones's answer was required, but he withheld it till two days after Mr. Horsmanden had bound himself to serve.

The war against Spain was proclaimed here on the 3d of April. The council met at the fort, and the militia were arrayed. The proclamation was read by Mr. Banyer at the door, and followed by three cheers. The grenadiers, led by Lord Stirling, then advanced to the town-hall. The constables followed after them; the under sheriffs, high sheriff, and town clerk, the common council, aldermen, recorder and mayor, then the council, the Lieutenant Governor, and last of all, the gentlemen of the town. When the proclamation had been again read at the hall, they returned to the fort, and after sometime the company retired.

It should not be omitted that a short convention of the Assembly took place in May, and that they passed a bill which originated in the Lower House, and sent it up to the Council on the 5th—was passed by the Governor the next day: and that another bill, which the council received on the 20th, had the Governor's assent on the 22d; the former being an act for raising money by a lottery to build a new jail in the metropolis, and the other to punish trespasses injurious to the light-house of Sandy Hook, which to the shame of the colony was now first erected.

Mr. Colden's second administration was then drawing to a close; for General Monckton, having succeeded in the conquest of Martinique, returned to his government on the 12th day of June, and began with a splendor and magnificence equal to his birth, and expected from that liberality and generosity for which he has ever been so highly distinguished.







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